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ESTABLISHING A DISCIPLINARY AND MILITARILY CREDIBLE CITIZEN ARMY IN THE DEMOCRATIC REPUBLIC OF CONGO

Sam Mubangu

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ESTABLISHING A DISCIPLINED AND MILITARILY CREDIBLE CITIZEN ARMY IN THE DEMOCRATIC REPUBLIC OF CONGO
A View from the Congolese Diaspora

By
Gustave Samaliam Amisi Bin Mubangu*

Introduction

The year 2006 truly was remarkable for the Congo (DRC). The Congolese people will always remember the historic presidential and legislative elections held in the country that year, the first such elections in nearly fifty years.

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1 The DRC should not be confused with the Republic of Congo. The latter is a former French colony (aka Congo-Brazzaville or French Congo) and DRC’s neighbor to the west. The DRC is the former Belgian Congo (aka Congo-Leopoldville, Congo-Kinshasa, or Zaire). When European powers divided Africa among themselves as pieces of a pie at the Conference of Berlin in 1885, they created an entity which later came to be known as “Congo Free State” (l’Etat Indépendant du Congo or EIC). Ironically, the EIC was not free or independent at all. At the time, European powers regarded the EIC as an international free zone in which all the European powers could pursue and establish trade or commercial activities. However, King Leopold II of Belgium outsmarted everyone and turned the EIC into his personal possession. Upon his death, the EIC officially became known as the Belgian Congo with territory larger than England, France, Germany, Spain, and Italy combined, or about 80 times bigger than the size of Belgium, its colonial power. On June 30, 1960 the country became a sovereign nation and adopted the name of DRC. In 1971, veteran Dictator Mobutu launched his pro-Africa cultural awareness policy which he termed “la politique du recours à l’authenticité.” Based upon this policy and on his own motion, Mobutu changed the name of the country to “Zaïre.” The name “Zaïre” actually was the transliteration by Portugese Explorer Diego de Cao of the term “Nzadi” which the people of the old Kingdom of Kongo in the 15th Century used while referring to the big river known today as River Congo. Upon Diego de Cao’s return to Portugal in 1482 after his sensational discovery of the Kingdom of Kongo, he reportedly referred to the big river he had seen there as “Zaïre,” instead of “Nzadi” as the natives had told him. In his desire to find a new name for his country as a part of his new policy of African authenticity, Mobutu ironically settled for the Portugese name of “Zaïre” because, in his view, it sounded better than the African name of Nzadi. So much for Mobutu’s authenticity policy! Finally, in 1997, then-rebel leader
In his inaugural speech on December 6, 2006, President Joseph Kabange Kabila announced the end of “playtime” and called for “a profound revolution of mentality” in the DRC. The new President declared that his presidential term of office would be guided by “good

Laurent-Désiré Kabila ousted Mobutu from power and unilaterally restored DRC as the name of the country. Throughout this article, the author uses the names Congo Free State, Belgian Congo, Democratic Republic of Congo, or Zaïre depending upon the applicable period of time in history under consideration. For an excellent exposé of the exploitation of human and natural resources in the DRC during the reign of Leopold II, see ADAM HOCHSCHILD, KING LEOPOLD’S GHOST, A STORY OF GREED, TERROR, AND HEROISM IN COLONIAL AFRICA (First Mariner Books ed., 1999)[hereinafter HOCHSCHILD]. For a contemporary study of the politics, struggle for democracy, Congolese nationalism, collapse of the state, and depredations by external forces in the DRC, see GEORGES NZONGOLA-NTALAJA, THE CONGO FROM LEOPOLD TO KABILA, A PEOPLE’S HISTORY (Zed Books, 2002). Other works of scholarly renown on the DRC include: CRAWFORD YOUNG AND THOMAS TURNER, THE RISE AND DECLINE OF THE ZAIRIAN STATE (The Univesity of Wisconsin Press, 1985); THE AFRICAN STAKES OF THE CONGOLESE WAR, EDITED BY JOHN F. CLARK (Palgrave and Mcmillan, 2002); CLEOPHAS KAMITATU, LA GRANDE MYSTIFICATION DU CONGO-KINSHASA (Complexe, avec l’accord des éditions Mespero, 1971); COLLETTE BRAECKMAN, LE ZAIRE DE MOBUTU (Librairie Arthème Fayard, 1992); COLLETTE BRAECKMAN, TERREUR AFRICAINE, BURUNDI, RWANDA, ZAIRE: LES RACINES DE LA VIOLENCE (Librairie Arthème Fayard, 1996). For a brilliantly accurate portrait of the grotesquely incompetent, lawless, and kleptomaniac regime led by veteran dictator Mobutu in the DRC, see MICHELA WRONG, IN THE FOOTSTEPS OF MR KURTZ, LIVING ON THE BRINK OF DISASTER IN THE CONGO (Fourth Estate Limited, 2000).

Other noteworthy events worldwide in Year 2006 included the following: (a) in the Middle East, the year 2006 will forever be remembered as the year of the “execution by hanging” of Saddam Hussein, the butcher of Baghdad; (b) in the United States of America (USA), a political tsunami swept the Republicans from power in both Houses of Congress thereby infusing life into the almost politically-moribund Democratic Party; (c) the end of his Excellency Kofi Annan’s career as Secretary General of the United Nations; (e) the first suspected murder by radiation involving former Russian KGB spook Alexander Litvinenko who, from his deathbed in London, accused then-President Putin of Russia of ordering his assassination; and finally (f) Pope Benedict XVI’s historic visit to Turkey in his attempt to heal the rift between the Roman Catholic Church and the Muslim world due, in part, to his comment describing Islam as a religion of violence.

The Congolese President’s family/last name is Kabila. In the DRC printed media or TV/Radio broadcasts, however, his middle and family names are often inverted, thus showing his full name as Joseph Kabila Kabange.

See President Joseph Kabila’s inaugural speech on Dec. 6, 2006 in Kinshasa: “... j’annonce la fin de la récréation afin que le Peuple puisse se consacrer entièrement au travail et ce, dans la paix et la tranquillité” at http://www.______________.

“Mon rôle dans la nouvelle configuration institutionnelle est de conforter la refondation de l’Etat et de susciter un véritable électrochoc pour une révolution profonde des mentalités.”

Id.
governance - democracy - respect for human rights.” He declared this trilogy to be essential for properly administering the DRC and winning the cooperation of other nations.

It is now generally agreed that the 2006 presidential and legislative elections in the DRC constituted a step forward in attempting to establish a democratic system of government for the Congolese people. However, transforming the DRC into a truly free society will require two additional, equally important steps: a re-examination by Congolese military and civilian leaders of the relationship between the military establishment and the Congolese civilian society; and development of an understanding by the Congolese people and their leaders of the proper/legitimate role of a professional military in a democracy.

In all societies, the primary function of the military is to be ready to defend the nation’s territorial integrity and to fight its wars, if necessary. In free societies, however, citizens exercise control over the military through their elected representatives. This principle, i.e., civilian control over the military, is so central to democracy that no country can be viewed as a free society until the national political and military institutions embrace such an ethos. Failure to embrace this principle encourages the control of government by a military junta or dictatorship. In spite of the enduring legitimacy of this principle, it would be unwise to assume that such

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6 Id. “[M]on mandat aura-t-il également, comme socle, la trilogie bonne gouvernance – démocratie – respect des droits de l’homme [emphasis added], qui sont les piliers principaux de la gestion moderne de l’État et de la coopération entre les nations.”

7 Id.

8 Parker v. Levy, 417 U.S. 733, 743, 94 S.Ct. 2547, 2556 (1974), stating “the differences between the military and civilian communities result from the fact that ‘it is the primary business of armies and navies to fight or be ready to fight wars should the occasion arise.’”

9 This principle has been expressed in many ways, including “the subordination of the military to legitimate civilian authorities,” or “civilian oversight over the military,” etc.
national institutions will always seek and accept the practice of civilian control over the military. Even in the case of the United States of America, there was no guarantee that such a principle or construct would be embraced. Like the DRC, the inception and early nationhood of the United States were defined by emergence from a long and costly war. At the end of that struggle, the principle of civilian control over the military was established in the United States owing to the unparalleled magnanimity and exceptional foresight of General George Washington.11

Today, military leaders from countries as diverse as those in Latin America and the former Soviet Union have come to realize that true democracy mandates the prohibition of military intervention in civil affairs and the acceptance of a truly subordinate role for the military in the life of the nation. History shows that many such military leaders did not always embrace this principle willingly and were more often than not forced to do so in the wake of popular uprisings as well as economic, social, and religious forces that had allied against them. Thankfully, however, the current trend in many developing nations is for generals to retreat from the affairs of state governance.

Militaries of many developing nations have taken major strides towards rejecting and stigmatizing military juntas and dictatorships as systems of governance. Unfortunately, Africa

10 Unlike the DRC, however, the degree of professionalism and discipline enjoyed by the military establishment of the United States in 1776 clearly surpassed that attained by the military establishment of the DRC in 1960. When the DRC gained its independence from Belgium in 1960, there were no Congolese officers in its armed forces as all officers had been European. In the United States, by contradistinction, many Americans had served in the militias of the several states as officers and easily migrated into the national armed force.

11 While the author believes General/President Washington was undoubtedly a very significant force in the formative years of the Republic, he did not act alone. The collaboration, ingenuity, and equally superb moral fortitude of his peers (other founding fathers) were very instrumental in aiding him to achieve greatness.
remains the continent *par excellence* where non-subordination of the military to civilian control
is alarmingly endemic. African militaries continue to be manipulated by those in power as a tool
of oppression, intimidation and persecution of the citizenry. Like many of their peers throughout
Africa, Congolese soldiers have not yet internalized internationally recognized values and
standards of the profession of arms.\(^{12}\) No person donning a military uniform deserves the honor
and respect reserved for professional soldiers, unless he/she is prepared to live by the guiding
standards\(^{13}\) and principles\(^{14}\) that govern today’s profession of arms. This author strongly
believes no military organization can be truly effective unless comprised of professional
soldiers\(^{15}\) committed to upholding the principles of selfless service to the Nation and civilian
control over the military.

\(^{12}\) In the United States of America, the fundamental guiding values and standards that build the character of Soldiers,
assist them in judging what’s right or wrong, and instill in them the will to win and even make the ultimate sacrifice
have been memorialized in the Army Values, Soldier’s Creed, and Warrior Ethos. See FM-1, The army, our army at
war relevant and ready today, page 1-15 (listing seven Army Values: Loyalty, Duty, Respect, Selfless Service,
Honor, Integrity, and Personal Courage). Loyalty calls upon every soldier to “bear true faith and allegiance to the
U.S. Constitution, the Army, your unit, and other Soldiers.” Duty directs the Soldier to “fulfill your obligations.”
Respect calls on every Soldier to “treat people as they should be treated.” The Value of Selfless Service directs
Soldiers to “put the welfare of the Nation, the Army, and subordinates before your own.” Honor directs Soldiers to
“live up to the Army Values.” Integrity calls on a soldier to “do what’s right –legally and morally.” Finally,
Personal Courage demands Soldiers to be prepared to “face fear, danger, or adversity (physical or moral).” These
Army Values “are the glue that binds together the members of a noble profession.” The American Soldier’s Creed
allows Soldiers to express their commitment to society. The very essence of what it means to be a soldier is captured
by the Warrior Ethos, which “describes the frame of mind of the professional Soldier. It proclaims the selfless
commitment to the Nation, mission, unit and fellow Soldiers that all Soldiers espouse.” The Warrior Ethos is part of
the Soldier’s Creed: “I will always place the mission first. I will never accept defeat. I will never quit. I will never
leave a fallen comrade.” See FM-1, The Army, page 1-16.

\(^{13}\) FM-1, at page 1-21 (quoting General of the Army Douglas MacArthur: “[Y]ours is the profession of arms—the will
to win, the sure knowledge that in war there is no substitute for victory; that if you lose, the nation will be destroyed;
that the very obsession of your public service must be Duty-Honor-Country.”).

\(^{14}\) In free societies, professional military organizations uphold the principles of civilian control over the military and
selfless service. Consequently, the author believes the adjective “professional” should be reserved to describe only
those military organizations that treat civilians with respect and strictly observe these core principles of civilian
control over the military and selfless service. [EXPAND THIS FOOTNOTE BY SHOWING HOW THE
PROFESSION OF ARMS HAS EVOLVED FROM NAPOLEONIC/IMPERIAL ARMIES WHICH WERE
SUBSEVIENT TO THE EMPEROR/KING TO TODAY’S MILITARIES BOUND BY THE DEMOCRATIC
PRINCIPLES OF CIVILIAN CONTROL OVER THE MILITARY].

\(^{15}\) Being a professional soldier is no longer simply a matter of knowing how to use weapons and making a living out
of the profession of arms. To be regarded as a professional soldier, one must not only dedicates his life to the

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There is no or little reason to doubt President Kabila’s sincerity in his desire to put the DRC back on track of the democratic experiment from which it was derailed by Mobutu and his supporters, both foreign and domestic, nearly fifty years ago. President Kabila’s good intentions and noble aspirations should be commended. Fair-minded and well-meaning Congolese certainly want him to succeed. Indeed, there is nothing the Congolese people and genuine friends of the DRC wish to see more than a strong, united, and prosperous DRC living in peace and security with all its neighbors in the heart of Africa. However, unless the Congolese military and civilian leaders agree to transform the nature of their military establishment, the DRC’s renewed democratic experiment runs the risk of being stopped in its tracks again. This national imperative requires adopting measures designed to ensure good order and discipline, and a new mentality within the Congolese military establishment.

In order to provide the reader with a complete and accurate description of the issues at hand, this paper is divided into five sections. Section I examines the nature and mission of the Congolese Army before and throughout Mobutu’s debilitating dictatorship. This section enables the reader to understand the systemic causes of the “un-soldierly” behavior of the Congolese military, starting in King Leopold’s Congo Free State and continuing thereafter under Mobutu’s long dictatorship of nearly 40 years. Section II consists of a review of the events that led to President Joseph Kabila’s ascension to power starting with the much welcomed ouster of veteran dictator Mobutu. It is designed to provide the reader with a concise account of the tragic events profession of arms; more importantly, he must abide by the values, standards, principles and rules of law that have been developed over the centuries to regulate the conduct of military men. Among these rules of law, are the international humanitarian law, the 1949 Geneva Conventions and their 1977 Protocols, the respect for legitimate civilian authority, the observance of internationally-recognized human rights standards and individual freedoms, and the principle of civilian oversight over the military.
that ripped the country apart and caused it to descend into chaos shortly after? its independence on June 30, 1960. Section III provides an overview of the doctrinal and constitutional foundations of an effective, disciplined and accountable armed force. Section IV proposes concrete measures that Congolese leaders should adopt to pave the way for the blossoming of a professional, disciplined and effective citizen army. Some such measures will require adopting legislation and implementing service regulations; others will require the development of an effective program of civic indoctrination of Congolese soldiers. Finally, Section V offers the author’s concluding thoughts and observations. In particular, the author concludes that no citizen army\textsuperscript{16} is likely to emerge in the DRC without a genuine fundamental restructuring of its Officer Corps, the creation of a responsible and disciplined Enlisted Corps, and the acceptance by Congolese military leaders of the subordinate political role of the military in a democratic society.

Section I: A Brief Review of the Military in the DRC before and under Mobutu’s Dictatorship

There is no doubt that Congolese politicians and military leaders have a unique opportunity under President Joseph Kabila to establish the foundations for an effective, accountable, disciplined and militarily credible armed force, one that will have the love and trust of the Congolese people at home, and the respect of friends and foes abroad. The establishment

\textsuperscript{16} Throughout this paper the author uses the terms “citizen army” and “republican army” interchangeably. It should be noted that Article 188 of the DRC Constitution currently in force specifically states that the Armed Forces are republican. However, there is a gap between what is stated on paper and the reality on the ground. If anything, this constitutional assertion should only be viewed as aspirational in nature. As this Paper will amply show, the armed forces of the DRC have yet to exhibit the attributes of a truly republican armed force.
of an effective and disciplined armed force is not only a critical national objective; it is also a prerequisite to legitimate democracy in the DRC. To fully appreciate the significance of this unique national opportunity, a brief examination of the role and nature of the armed forces before and under Mobutu’s dictatorship is necessary.

The history of the Congolese military is a sad one. Before the independence of the DRC from Belgium in 1960, the armed force of the Belgian Congo was known as the “Force Publique.” It was originally established by King Leopold II of Belgium. On June 30, 1960 the “Force Publique” was replaced by “l’Armée Nationale Congolaise” (ANC). When Mobutu changed the name of the DRC to Zaïre in 1971, he also changed that of the armed forces to Forces Armées Zaïroises (FAZ). Because of Force Publique/ANC/FAZ soldiers’ consistent use of acts of excessive brutality against civilians, as well as their endemic corruption and total disregard for the law, the Congolese people have historically been very fearful of the army instead of regarding it as a guarantor of security and defender of the integrity of Congolese national territory. How and why in the first place did this type of oppressive and unprofessional military develop in the DRC? The ruthlessness of the Congolese soldiers and their inability or unwillingness to understand and accept the unique role of a responsible and disciplined military organization in a democratic society are part of the bitter legacy of King Leopold II of Belgium.

In Leopold’s Congo Free State, the “Force Publique” served as a framework for control over his vast real estate. The primary purpose of the Force Publique was to force other men to

17 HOCHSCHILD, supra note 2 at 123 (“the framework of control that Leopold extended across his enormous realm was military.... Leopold had made use of African mercenaries ever since sending Stanley to state his claim from 1879 to 1884. In 1888 he formally organized them into the Force Publique, an army for his new state”).
provide labor. After it was formally established, the Force Publique “grew to more than nineteen thousand officers and men, the most powerful army in central Africa” at the time. It was “[a]t once counter-guerrilla troops, an army of occupation, and a corporate labor police force.” Structurally, the Force Publique “was divided mainly in small garrisons – typically, several dozen black soldiers under one or two white officers, on a river bank.” From its establishment in the 1800’s until June 30, 1960, the Force Publique had no Congolese Army officers.

Who were these European men who flocked to the Belgian Congo to serve as officers in the Force Publique? One thing is certain: because of the views Europeans held generally about Africa at the time, it is reasonable to infer that they were not Europe’s cream of society. Like

18 Id. (“After all, without armed force, you cannot make men leave their homes and families and carry sixty-five pound loads for weeks or months”). See also KISUKULA ABELI MEITHO, LES ARMEES DU CONGO-ZAIRE, UN FREIN AU DEVELOPMENT 55 (Edition Misege, Londres 2000) (stating: la force publique “avait la mission d’assujettir ‘les indigenes’ . . . afin de permettre . . . l’exploitation des richesses sans concurrence, l’enrichissement du roi et de la Belgique”).

19 Id.

20 Id. at 123.

21 Id. at 124.

22 HOCHSCHILD, at 301 (stating, “When independence finally came to the Congo, the country fared badly. Like most other colonial powers in Africa, Belgium was taken by surprise by the demand for self-rule that swept across the continent in the 1950’s, igniting mass demonstrations in Leopoldville in 1959 that were bloodily suppressed by the Force Publique. Until then, Leopold’s heirs had thought independence might come, but decades hence. Some Africans were being trained for that distant day; but when pressure grew and independence came in 1960, in the entire territory there were fewer than thirty African university graduates. There were no Congolese Army officers, engineers, agronomists, or physicians. The colony’s administration had made few other steps toward a Congo run by its own people: of some five thousand management-level positions in the civil service, only three were filled by Africans”), accord, DEVLIN, CHIEF OF STATION, A MEMOIR OF 1960-67 7 Public Affairs 2007) (explaining that on June 30, 1960 “out of fourteen million people, there were fewer than twenty university graduates. There was no Congolese cadre of doctors, dentists, engineers, architects, lawyers, university professors, business executive, or accountants. The Force Publique, the country’s army soon to be re-named the Armée Nationale Congolaise (ANC), was officered exclusively by Belgians; the highest ranking Congolese was an adjutant, a sort of senior sergeant, but only a few had recently gained that rank.”
Henry Morton Stanley, the principal caretaker of King Leopold’s interests in Congo Free State, Force Publique officers were by and large men of obscure social origins, little or no education, and questionable moral values. The Belgian Congo had much to offer for these men. It was a “place to get rich and to wield power” and where European men could be “everything! Warrior, diplomat, trader!” The Belgian Congo also “offered a chance for a great rise in status.” For example, Stanley became the most acclaimed explorer of all times and earned the nickname of Bula Matari. Another Force Publique officer was Léon Rom, a native of Mons, Belgium.

23 HÖCHSCHILD, supra note 2 at 6 (suggesting that medieval Europeans thought sub-Saharan Africa “was a region of uttermost dread . . . where heavens fling down liquid sheets of flame and the waters boil . . . where serpent rocks and ogre islands lie in wait for the mariner, where the giant hand of Satan reaches up from the fathomless depths to seize him, where he will turn black in face and body as a mark of God’s vengeance for the insolence of his prying into this forbidden mystery. And even if he should be able to survive all these ghastly perils and sail on through, he would then arrive in the Sea of Obscurity and be lost forever in the vapors and slime at the edge of the world”). Id. at __ (indicating that beyond the Sahara, Africa generally was unattractive to most Europeans who thought of sub-Saharan Africa as “Mare Tenebroso, the Sea of Darkness). See also PETER FORBATH, THE RIVER CONGO: THE DISCOVERY, EXPLORATION AND EXPLOITATION OF THE WORLD’S MOST DRAMATIC RIVER, (NEW YORK, HARPER & ROW 1977).

24 HÖCHSCHILD, at 21-24 (the man who became known as Stanley was born on January 28 1841 “in the small Welsh market town of Denbigh [UK]. He was entered on the birth register of St. Hilary’s Church as ‘John Rowlands, Bastard’ – an epithet that was to mark the boy for the rest of his life, a life obsessively devoted to living down a sense of shame . . . . Young John was the first of five illegitimate children born to Betsy Parry, a housemaid. His father may have been John Rowlands, a local drunkard who died of delirium tremens, or a prominent and married lawyer named James Vaughan Horne, or a boyfriend of Betsy Parry’s in London, where she had been working.” In 1859, young John left England for the United States. He landed in New Orleans where a wealthy cotton broker named Henry Stanley took him as an employee. It was while living in New Orleans that young John would eventually rename himself Henry Morton Stanley).

25 Id. at 136.

26 Id. at 137.

27 Id. at 137.

28 CRAWFORD YOUNG AND THOMAS TURNER, THE RISE AND DECLINE OF THE ZAIRIAN STATE at 30-37 (Madison: Univ. of Wisconsin Press, 1985) (explaining the origins of the term “Bula Matari” or “Bula Matadi,” which became a metaphor that symbolized the Belgian colonial state in the DRC. Young and Turner report that this term “was first applied to Leopoldian agent Henry Stanley, reflecting the impression created by the feat of moving a large caravan bearing dismantled steamers around the rapids of the lower [Congo] River, over a new and tortuous route from Vivi to Kinshasa in 1879-80. The expression means, literally, ‘he who breaks rocks;’ by metaphorical extension it came to convey the image of force which crushes all resistance. While initially attached to Stanley as imperial agent of the unfolding colonial state, it was soon transferred to the state as an abstraction, or to its European representatives as impersonal agents of domination. . . . Bula Matadi signified terror.” See also CRAWFORD YOUNG, Contextualizing Congo Conflicts, Order and Disorder in Postcolonial Africa, THE
Rom “enlisted in the Belgian Army at the age of sixteen, but did not have enough education to become an officer.” Subsequently, he sailed for the Congo where he became a captain in the Force Publique and “was soon put to work training black troops.” As a captain, Rom “earned 50 percent more than a colonel in the Belgian Army back home.” While the Belgian Congo offered enormous opportunities and was literally “a gold rush and the Foreign Legion combined” for European men, its army became a “convenient escape” for Europe’s social wrecks and “many hard-bitten men fleeing marital troubles, bankruptcy, or alcoholism.”

The Force Publique was created to protect the colonizers from the colonized and to guarantee the exploitation of the natural resources of the Congo for the benefit of the colonizers. It was the epitome of the Colonial Master’s repressive force designed to keep the Congolese population in check while at the same time coercing them to produce goods and


29 HOCHSCHILD, at 137.

30 Id.

31 Id.

32 Id.

33 Id.

34 HOCHSCHILD, at 138.

35 Id. at 139.

36 Id. at 278-279 (stating, “force labor ... applied to all kinds of work. Force labor became particularly brutal during the First World War. In 1916, by official account, one area in the eastern Congo, with a population of 83,518 adult men, supplied more than three million man-days of porterage during the year; 1359 of these porters were worked to death or died of disease. A Catholic missionary reported: ‘the father of the family is at the front, the mother is grinding flour for the soldiers, and the children are carrying the foodstuffs.’ With the start of the Second World War, the legal maximum for forced labor in the Congo was increased to 120 days per man per year”).
Beginning with their training and throughout their careers, Congolese soldiers were indoctrinated by their European instructors and officers to regard civilians as troublemakers. According to Mr. Daniel Monguya, Congolese serving in the Force Publique were brainwashed into believing that their fiercest enemy was to be found in the local civilian population and that Congolese civilians were the Enemy Number One of public order and, therefore, the legitimate target of the soldier’s rage and repression.

Belgian Colonial Masters were cruel, but certainly astute. To win the complete loyalty of Congolese soldiers, the Belgian Colonial Master treated them better than the rest of the population. Soldiers enjoyed better living conditions and received housing, foodstuffs, and numerous other goods in return for their loyal service. Because of these privileges, Force Publique soldiers, most of whom were illiterate, quickly developed a superiority complex vis-à-vis the rest of society, which in turn caused them to treat civilians as second class citizens who could be abused or violated with impunity. This situation was exacerbated by virtual immunity that members of the Force Publique enjoyed from any legal sanction based on the maltreatment of the civilian population.

37 The author paraphrases one of the many statements made by Professor Kayemba Ntamba of the Faculty of Law at the Campus of Kinshasa during his lectures that the author attended between 1974 and 1975.

38 DANIEL MONGUYA MBENGE, HISTOIRE SECRÈTE DU ZAIRE, ______: Accord, MUKENDI & KASONGA, supra note ___ at 44 (indicating that during their initial training the new recruits were brainwashed into firmly believing that the civilian is like a goat (in lingala, “civil azali ntaba”) and that, as such, he needs to be disciplined by the soldier). Congolese soldiers also refer to civilians as “basenzi” in lingala (uncivilized), or as “nyama” in both swahili and lingala (animals). The author proposes that the term “musenzi,” which becomes “basenzi” in the plural form, appears to be transliterations of the French words “mon singe” (my monkey or ape) or “des singes” (monkeys or apes) used by Force Publique white officers and other colonial masters to refer to black people in general. Because Force Publique soldiers were illiterate and unable to pronounce French words correctly, the insulting expression “des singes” sounded in their years as “basenzi”). There are many such transliterated expressions which have become a part of the Congolese lingua Franca vocabulary (Swahili in the East or Lingala in the West and in the armed forces): For example, “nondojé” is a transliteration of the French expression/swearing “nom de Dieu;”
What were the role and nature of courts-martial in Congo Free State and in Belgian Congo? The short answer is that they were consistent with the monarchical theory of courts-martial in effect in Belgium, Great Britain and even in the United States at the time. According to this theory,

the king was not only the commander of the Army, he was the legislator of the Army, he prescribed . . . the offenses and the penalty; he prescribed both the substantive and procedural law; he prescribed the courts-martial, their jurisdiction and their procedure. He controlled the entire system of discipline and the methods of his administration. The Army was his, the officers were his officers and from him drew their authority. Courts-martial were courts-martial of the King and of the officers representing him and his power of command. The courts-martial, therefore, applied his law, his penalties, followed his procedure and were subject to his command. Under such a scheme, a court-martial was but an agency of command, nowhere in touch with the popular will, nowhere governed by laws established by the people to regulate the relation between sovereign and subject. It was not a judicial body. Its functions were not judicial functions. It was but an agency of the power of command to do its bidding.39

Thus, a court-martial under this theory was not concerned with “doing justice according to established principles of jurisprudence and independently of all personal power. Quite the opposite! It regards the court-martial simply as the right hand of the commanding officer to aid him in the maintenance of discipline . . . . It is answerable not to the law but to him.”40 Such was the system of courts-martial established in the DRC by King Leopold II of Belgium and followed by his heirs, the Belgian Colonial Master and Mobutu.

This brief review has demonstrated that the evolution, soul, and spirit of the Congolese Army was substantially shaped by King Leopold II and his colonial officers, most of whom were

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40 Id.
Europe’s social wrecks and rejects. The nature and role of the Force Publique were at odds with those of professional armies in free societies. In sum, the Force Publique was not a citizen or republican army. On the contrary, it was the Belgian Colonial Master’s militia and his instrument of intimidation and oppression established for the purpose of ensuring the maximum exploitation of natural resources. Its moral values, doctrinal foundations, and intellectual abilities were not those associated with armies of free societies. It was an instrument of terror!

Regrettably, the winning of independence by the DRC in 1960 did nothing to improve the hostile/antagonistic attitude of Congolese soldiers toward civilians. Following the departure of the Belgian Colonial Master, Congolese soldiers quickly found themselves a new master to obey, protect, and serve: Mobutu and his Binza group. Indeed, after the election of Patrice Emery Lumumba as Prime Minister in 1960, Mobutu seized power by force less than three months later by neutralizing both Premier Lumumba and President Kasavubu and then constituting his first cabinet to govern the country. Reportedly, this sudden termination of the democratic

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41 HOCHSCHILD, at 139 (A reported popular song in the Belgian Congo at the time sums this up very well: “There’re those who blow up at their families, who run up debts, who play the fool in vain, who one fine evening are fed up with their girls. They take off, full of sorrow, for the Congo . . . .)

42 DEVLIN, at 6 ( “Leopold’s legacy was appalling: a devastated landscape of burnt and deserted villages, a ruined agriculture, a declining birthrate, and an estimated ten million Congolese dead as the result of his misrule. In the half century since [1908] the Belgians . . . exploited the huge natural riches of the country. For Leopold, the lure had first been ivory and rubber; for his successors, it was copper, cobalt, and diamonds. Belgians, not Congolese, controlled all economic and commercial enterprises”).

43 DEVLIN, at 98-99 (Following Mobutu’s 1960 coup d’état that neutralized PM Lumumba and President Kasavubu, he formed the Binza group which became the core of his support. It primarily consisted of three individuals: Mobutu, Justin Bomboko, and Victor Nendaka. Devlin points out that the three formed “an informal troika that remained at the center of power in the Congo the next six years . . . The troika Mobutu, Bomboko, and Nendaka were its core, but there were other influential individuals also involved. They included Cyrille Adoula, . . . Damien Kondolo, . . . Mario Cardoso, . . . and Albert Ndele . . . “).

44 HOCHSCHILD, at 301 stating “[b]arely a month earlier, an election had made Lumumba a coalition-government prime minister. It was the first democratic national election the territory had ever had. In substance, if not in form, it would be, for more than four decades, the last”); see also DEVLIN, at __; MUKENDI & KASONGA, at 197 (In his 6 December 1993 Open Letter to veteran dictator Mobutu, then-rebel leader-Laurent Désiré Kabila alluded to
experiment in the DRC was the result of the decision made by Mobutu\textsuperscript{45} and some officials in the United States Government,\textsuperscript{46} who provided Mobutu with counsel and financial support.\textsuperscript{47} Mobutu had served as a Noncommissioned Officer (NCO)\textsuperscript{48} in the Force Publique during Belgian colonial rule. After his election as Prime Minister of the DRC, Lumumba promoted Mobutu\textsuperscript{49} to the rank of Army Colonel, and appointed him to serve as Chief of Staff of the new Congolese National Army.\textsuperscript{50} The primary role of the Congolese soldiers following the country’s independence and Mobutu’s 1960 military coup was the protection of Mobutu and his associates. Under Mobutu’s leadership, Congolese soldiers did everything in their power to repress the civilian population just as they had done during the colonial era. The constant mutinies of

Mo\textsuperscript{b}utu’s “first putsch of 14 September 1960 which, having interrupted the democratic tradition of republican institutions, led to chaos, . . . a popular insurrection in 1963 in Kwilu and 1964-66 in the east that only multiple foreign military interventions quelled.”

\textsuperscript{45} \textit{Id.} at 302.

\textsuperscript{46} \textit{DEVLIN,} at 62 (quoting one of the messages that the CIA Director sent to CIA Chief of Station in the DRC on August 26, 1960: “In high quarters here it is clear-cut conclusion that if Lumumba continues to hold high office, the inevitable will be at best chaos and at worst pave way to a Communist takeover of the Congo with disastrous consequences for the prestige of the UN and for the interests of the free world generally. Consequently, we concluded that his removal must be an urgent and prime objective and that under existing conditions this should be a high priority of our covert action”); \textit{Id.} at 63 (to implement this policy designed to achieve Lumumba’s removal, the CIA Chief of Station in the DRC “was authorized to spend up to $100,000.00 on my own authority on any operation that appeared feasible if time did not permit me to refer it first to Headquarters for approval. That was a huge vote of confidence. To the best of my knowledge, no other station chief had ever been given such latitude. At that time, station chiefs were required to ask for authorization for any operational expenditure of more than fifty dollars”); \textit{Id.} (explaining that the U.S. Ambassador to the DRC Timberlake told President Kasavubu “that Lumumba was a dangerous man and implied that he should not continue as prime minister”); \textit{Id.} at 86 (asserting that the coup “was vital if we were to prevent the Soviet Union from obtaining a foothold on the African Continent, one that could eventually threaten our NATO defenses”).

\textsuperscript{47} \textit{Id.} at 76-80 (describing the meeting between Mobutu and Chief of Station Devlin during which Devlin assured Mobutu that the United States Government stood to support Lumumba’s removal from office and recognize a temporary government composed of civilian technocrats as envisioned by Mobutu. Devlin also acquiesced to Mobutu’s request for \textbf{five thousand dollars} [emphasis added] that he would provide to his senior officers for their support of the coup).

\textsuperscript{48} \textit{See HORSCHILD,} at 302.

\textsuperscript{49} Even though he was Mobutu’s senior only by five years, Lumumba nevertheless regarded him almost as his “adoptive son” in whom he had full confidence and trust. As a result, Premier Lumumba could never have fathomed that his “adoptive son Joseph” would be able to betray him.

\textsuperscript{50} Lumumba’s appointment of Mobutu was contrary to advice received from his most trusted associates. . .
soldiers and, ultimately, Mobutu’s coups d’état of September 14, 1960 and November 24, 1965 clearly displayed the Congolese military’s lack of respect for the rule of law and contempt for democratically-elected civilian authorities.

The role played by Mobutu in the overthrow of the DRC’s first freely-elected leader established the exact opposite precedent to that which was set by General Washington at the inception of the United States. At the end of the Revolutionary War, the Continental Congress was bankrupt and unable to settle military pay owed to soldiers, nor the debt to wealthy individuals who had financed the war of independence against British colonial rule. A group of rebel Army officers met at Newburgh, New York during March of 1783 and agreed that the “army should, even if peace were declared, refuse to go home until the states agreed to a system by which all federal debts could be paid.” More importantly, the co-conspirators agreed to use military force to establish “a strong central government that could protect the rights of its creditors,” if their demands were not met. Simply put, the rebel officers intended to carry out a government takeover, if need be. However, they were uncertain concerning General Washington’s attitude towards the movement. Specifically, “would the National Hero be

51 DEVLIN, at 76-85.

52 NZONGOLA, at 145 (describing Mobutu’s dictatorship and stating the November 24, 1965 “coup was engineered by external forces determined to promote Western interests in the context of the Cold War”); accord, CLARK, at 3 (“Mobutu was largely a creature of the Cold War”); YOUNG & TURNER, at 53 (“the American embassy certainly had advance knowledge of the coup and encouraged the takeover”).


54 Id.

55 Id. (“The road seemed clear except for one serious potential barrier: George Washington”).
willing to countenance a movement to use the army as a political force? And if he refuses to go along, could he be pushed aside?“56

While General Washington pondered the gravity of this moment in his life as a citizen-soldier-national hero, “anarchy and chaos seemed about to overwhelm America.”57 He faced a critical choice: approve the co-conspirators’ plan to use the army as a political force,58 or do his utmost to discourage it. Fortunately, General Washington intuitively regarded the rebel officers’ plot as a serious threat to liberty. For this reason, he strongly opposed it and used his moral authority to discourage the rebel officers from carrying out their plan.59 By taking this stand, General Washington “saved the United States from tyranny and civil discord”60 and established a tradition expected of American soldiers of all generations and ranks.61 General Washington’s exemplary love of country, selfless service, exceptional moderation, and

56 Id.

57 Id. at 171.

58 Id., stating: “Was it not his patriotic duty . . . to accept the inevitable, as he had so often done on physical battlefields? And what of his ambitions? In a world of kings, why should not George Washington also be a king?”

59 FLEXNER, supra note 8 at 172. Washington decided that he “could not . . . countenance a movement which would be ‘productive of civil commotions and end in blood . . . and shall pursue the same steady line of conduct which has governed me hitherto’.”). For General Washington’s speech to the rebel officers of the Army at Newburgh on March. 15, 1783. See THOMAS S. LANGSTON AND MICHAEL G. SHERMAN, GEORGE WASHINGTON, 55-59 (CQ PRESS 2003).

60 Id. at 175.

unequaled moral excellence\textsuperscript{62} ensured that the American Revolution, unlike some other revolutions, \textsuperscript{63} did not result in the “subversion of that liberty it was intended to establish.”\textsuperscript{64}

Mobutu regrettably chose a different path for the DRC than that followed by Washington. Mobutu’s choice was informed by a combination of factors, including his ignorance, lack of military professionalism, poor counsel from his foreign masters, his insatiable thirst for power for the sake of power, his quest for personal grandeur, and his lack of concern for the well-being of his people. Not only was the new Congolese military institution immune from effective civilian control, it also held the power to dictate to the nation who would hold power in the government and over the people. To this day, the inability or refusal of the Congolese military institution to respect the will of the people haunts the DRC’s history and looms dangerously in the background, continuing to frustrate efforts to restore short-lived, post-independence legitimate rule of law.

The forces shaping the Congolese military action in the wake of independence are not difficult to discern or understand. Although many Congolese saw Lumumba as an icon of freedom and self-determination, the national and international powers wielding influence over the nascent Congolese military painted a much more diabolical picture.\textsuperscript{65} It turned out that

\textsuperscript{62} FLEXNER, \textit{supra} note 8 at 171. Washington later “thanked the Ruler of the Universe – ‘the Greatest and Best of Beings’ - for having led him ‘to detest the folly and madness of unbound ambition.”

\textsuperscript{63} Id., at 168, stating that “[a]llmost every revolution in the history of the world, however idealistically begun, had ended in tyranny. \textit{See also} NICK HEWLETT, MODERN FRENCH POLITICS, ANALYSIS, AND CONSENSUS SINCE 1945, 11 (POLITY PRESS 1998) (reporting that “[b]etween the Revolution of 1789 and today, every political regime has ended in coup d’état, revolution or war and there have been 15 different constitutions.”)[hereinafter HEWLETT].

\textsuperscript{64} FLEXNER, \textit{supra} note 8 at 175.
during the 1960’s western governments led by the Kingdom of Belgium hated Lumumba primarily for three reasons: first, Lumumba was “a mercurial and charismatic figure” whose message of equality, national dignity and real independence from Belgium (i.e., both political and economic) was not well received by many people in the West; second, Lumumba was a man of uncompromising principles and the utmost patriotism. Finally, his power of persuasion was absolutely amazing. Mobutu proved to be just the opposite. Indeed, western government officials regarded him “as someone who would look out for their interests [as he] had received cash payments from the local CIA man and military attachés while Lumumba’s murder was being planned.”

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65 For many years while growing up in his native Congo, the author wondered why western governments hated Lumumba so much, a man who had been elected by the people of the DRC in accordance with western democratic principles. The author and other children were taught in schools and churches that Lumumba was a communist and that he was not good for the DRC. Many in the West viewed him as a “mad dog,” or as “a wild man, a dangerous man.” Even catholic priests and other missionaries climbed on the bandwagon of the anti-Lumumba propaganda machine by delivering hate sermons in churches and by spreading what subsequently proved to be outright lies about him. In one such sermon recalled by the author, a priest gave his congregation a very frightening definition of the political ideology that Lumumba had allegedly espoused. Lumumba’s communism, the priest said, simply meant this: if your grandpa is polygamous with five wives, those wives would henceforth belong to the state; if you have five children, all such children would belong to the state; if you have goats or cows, what have you, all such goods would henceforth belong to the state, etc. Later, the author realized that the whole anti-Lumumba propaganda campaign was a patchwork of lies by those who had conspired to have him murdered thereby robbing the Congolese of their visionary, patriotic and democratically elected leader. The author was in secondary school when he learned for the first time through his own reading that Mobutu in fact was the key co-conspirator in the planning and execution of Lumumba’s assassination plot.

66 Id.

67 HOCSCHILD, at 391 (“Lumumba believed that political independence was not enough to free Africa from its colonial past; the continent must also cease to be an economic colony of Europe”).

68 Id., at 302 (“His message, Western governments feared, was contagious. . . . Anathema to American and European capitals, he became a leader whose days were numbered. . . . In a key meeting, [a CIA] official who was there recalled, Eisenhower clearly told CIA chief Dulles ‘that Lumumba should be eliminated.’”).

69 Id. (indicating western leaders had concluded that, unlike Mobutu, Lumumba “could not be bought”).

70 DEVLIN, at 70 (explaining that when the CIA Chief of Station in the DRC launched a covert operation seeking to have a vote of no-confidence in Lumumba in the Congolese Senate, Lumumba survived the vote much to the surprise and chagrin of the CIA Chief of Station. According to Devlin, Lumumba “spoke to the senators for two hours and the censure motion was defeated by forty-seven to two, with seven senators abstaining, including Ileo and Adoula,” on whom the CIA Chief had counted).
Against the backdrop of foreign interferences in Congolese internal politics and Mobutu’s personal ambitions, several factors exacerbated Congolese soldiers’ contempt for civilian authority, including a high rate of illiteracy, a lack of training in military traditions and usages, a miscomprehension of the proper role of the military in a democratic society, and the absence of a truly separate, fair, impartial and effective military justice system. Unfortunately, these factors continue to affect the Congolese army to this day and explain in part why the DRC became the scene of so many explosive crises such as failed secessions, foreign interventions, armed rebellions, robberies, troop looting rampages, soldier mutinies, civil wars and various other atrocities. Worst of all, the DRC was forced to endure Mobutu’s 32 years of western-backed dictatorial kleptocracy. Some of the French speaking readers of this Paper may be old enough to remember the French term “congolisation,” coined by political pundits in the early sixties as a synonym for anarchy or pandemonium. This tongue in cheek parody of the country’s name is understandable, if not forgivable, given the conditions that prevailed in the DRC in the 1960’s.

With respect to the administration of military justice, it should be noted that Mobutu showed no desire to dismantle the Leopoldian system of courts-martial inherited from the

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71 HOCSCHILD, at 302.

72 The DRC was one of the Cold War front lines where the United States earnestly fought the Soviet Union for control of the world with disastrous consequences for the welfare of the indigenous populations. See DEVLIN at 54 (making it clear CIA officials had no doubt that the Congo “was a strategic linchpin in that epic struggle”), accord, Id. at 47 (stating that CIA Director Dulles believed “that only a thin line separated the Cold War from a hot one and he was passionate about the CIA’s role in preventing the world from slipping across that line into a nuclear conflict . . . His view was that the United States could not afford to lose the Congo to the Soviet Union.”).

Belgian colonial administration. He not only maintained it in place, but even brought it to new heights of perfidy. Mobutu extended the jurisdiction of his court-martial system to try civilians. He also used it effectively as a tool for crushing political dissent and for “eliminating” several Congolese leaders whom he perceived as threats to his one-man-rule.74

In sum, beginning with the malfeasance of King Leopold II of Belgium, continuing through the toppling of the Lumumba regime, and followed by 36 years of Mobutu’s control, the Congolese military institution evolved into a notoriously ill-disciplined and corrupt force, better known for its shakedowns, looting rampages,75 atrocities,76 and excessive brutality toward Congolese and foreign civilians,77 than for its prowess on the battlefield. This lamentable result

74 The most extraordinarily chilling abuse of the court-martial system by Mobutu to kill innocent civilians viewed by him as potential political competitors occurred when Mobutu himself cooked up the so-called “complot de la pentecôte” with the assistance of two of his trusted military officers: Bangala et Efomi. It was so named because it played out in May of 1966 as Congolese Christians were commemorating the holy feast of Pentecost. The purpose of this sham plot malevolently machinated by Mobutu was to frighten the Congolese and cause those who might have entertained the thought of challenging his dictatorial powers to abandon such ideas. In the end, Mobutu convened a sham court-martial and directed it to try, convict and sentence to death by hanging four innocent sons of the DRC: Evariste Kimba, Jérôme Anany, Emmanuel Bamba, and Alexandre Mahamba. See KAMITATU, at __.

75 MUKENDI & KASONGA, at 56 (“... dans le regime Mobutiste, les militaires ne payent aucun service, ils volent, pillent, rançonnent,” translated into English as “Under the Mobutu regime, soldiers do not pay for services rendered; instead, they steal, pillage, and rob.”)

76 The atrocities committed by Mobutu and his soldiers against defenseless civilians have widely been reported. See PIERRE LOTIKA KIBESI YAMBUYA, ZAIRE: L’ABATTOIR, UN PILOTE DE MOBUTU PARLE, translated into English as, ZAIRE, THE SLAUGHTERHOUSE, MOBUTU’S PILOT SPEAKS OUT) (EPO eds., Brussels, Jan. 1991) (In this book, Mr. Pierre Yambuya, an eye-witness who served as one of Mobutu’s helicopter pilots, detailed the extra-judicial killings of Congolese civilians that soldiers were directed to carry out under veteran dictator Mobutu’s direct orders); See also PIERRE LOKITA KIBESI YAMBUYA, L’AUTOPSIE D’UNE ARMEE SANS COEUR NI AME, translated into English as, THE AUTOPSY OF A HEARTLESS AND SOUL-LESS ARMY) (La Découverte ed., Paris, May 28, 1993) (In this book, Yambuya details gruesome assassinations of his Congolese compatriots who dared to speak out against Mobutu’s dictatorship. For example, he personally witnessed the killing of two Congolese/Zaireans who were flown to 1,000 meters of altitude in a helicopter and were dropped to the ground over the jungle on 25 June 1978. He also witnessed the massacre of Europeans by Mobutu’s soldiers in the city of Kolwezi on 14 May 1978, which Mobutu personally ordered as a strategem to convince western powers to intervene on his side and against former Katangese rebel forces who had invaded Zaire from their bases in Angola in a failed attempt to topple Mobutu from power); CLEOPHAS KAMITATU, translated in English as, THE GREAT MYSTIFICATION OF CONGO-KINSHASA, translated in English as CLEOPHAS KAMITATU, THE GREAT MYSTIFICATION DU CONGO-KINSHASA, translated in English as CLEOPHAS KAMITATU, THE GREAT MYSTIFICATION OF CONGO-KINSHASA ((Complexe avec accord des éditions Maspero, 1971)}
was exacerbated by 36 years of Mobutu’s abusive control of the military justice system by using it as a political tool for eliminating potential competitors in order to perpetuate his grip on power in the DRC.

Sadly, the excessive brutality and repressive nature of the Congolese military and armed militias towards civilians in the DRC has continued even under the Third Republic. The State Department’s 2006 Country Reports on Human Rights indicates that the “Forces Armées de la République Démocratique du Congo (FARDC) and “la Police Nationale Congolaise” (PNC) (Congolese National Police) were responsible for “two-thirds of all unlawful killings in the country.” During the first six months of 2006, it was reported that “members of the FARDC allegedly killed more than 50 civilians, and PNC officers allegedly killed at least 10.” In his

77 DEVLIN, supra note at 54 (while describing the mutiny of Congolese soldiers after independence, Larry Devlin, CIA Boss in the DRC, recalled several instances of brutality visited upon him personally at the hands of those soldiers. In addition, he routinely observed that Congolese soldiers “drinking in bars or wandering the streets were generally armed and had a disconcerting habit of threatening or beating whites for no apparent reason.” See also DEVLIN, at 20 (recounting an instance during which a “big soldier jumped [him] and hit [him] with his fist, knocking [him] unconscious”).

78 According to a statement posted on the website of the Office of High Commission for Human Rights of the United Nations, “the human rights situation in the DRC continues to deteriorate. Serious violations, such as arbitrary executions, rape, torture and cruel, inhuman and degrading treatment are pervasive, committed mostly by the army, police and intelligence services. The latter, highly politicized, are often used to commit politically-motivated crimes during specific periods and then revert to daily harassment and intimidation of Congolese citizens.” Available at http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/ZRSummary0809.aspx


80 Id. The 2006 Country Report of the United States on Human Rights Practices in the DRC also provides many other instances of atrocities and unlawful killings committed by government security forces, seemingly with impunity. For examples, the Report states that transitional government security forces arbitrarily and summarily executed civilians, often for failing to surrender their possessions or to submit to rape. On January 22, 2006, in Kagaba, Ituri District, FARDC soldiers of the Fourth and Sixth Integrated Brigades allegedly shot several civilians, killing 13, including four women and two children, and wounding two others as they attended Sunday mass. According to the Report, no action was taken against the soldiers. On June 26, 2006 a FARDC commandant in Kongolo, Katanga Province, allegedly killed a member of the Federation of Congolese Enterprises after the victim refused to pay money demanded by the commandant to buy a motorbike. In Butembo, North Kivu Province, on July
November 2007 Report to the Security Council, the Secretary-General of the United Nations asserted that FARDC troops “remain a threat to the security of the population.” This Report documents numerous human rights and child protection violations by the FARDC and other armed groups roaming the country, including “arbitrary execution, rape, torture and cruel, inhumane and degrading treatment.” The Report also indicates “[s]exual and gender-based violence remains endemic throughout the [DRC], with security services among the worst offenders. In June 2007, the Secretary General of the United Nations reported to the Security Council that “[s]ummary executions, politically motivated mass arbitrary arrests, ill-treatment and torture of civilians, beatings and rape continue to be committed, mainly by security service

18, 2006 FARDC soldiers of the Second Integrated Brigade allegedly killed a civilian who attempted, with others, to stop soldiers from extorting money from them. In Fataki, Ituri District, a drunken FARDC soldier shot and killed two election workers during vote counting on October 30, 2006. The Report also indicates that government security forces killed suspects during apprehension or while holding them in custody. For example, a FARDC commander in the Ituri District town of Dii arrested 19 suspects in a murder case and detained them at a military camp on January 22, 2006. One detainee allegedly died of severe mistreatment while in detention. An elderly man in the North Kivu Province town of Kilindera died in custody on March 22, 2006 one day after military prosecutors arrested him in an attempt to force him to pay a fine. The soldiers in charge of the jail allegedly kicked him, beat him with truncheons and ropes, and forced him to march 32 miles until he died. On September 26, 2006 guards at Kinshasa's main prison allegedly opened fire on prisoners while attempting to force them to return to their cells, killing five and wounding several others. The prisoners had rioted in reaction to a prohibition on visits by family members. There were no reports of authorities taking action against the guards involved. Government security forces committed other killings, including some involving beatings and excessive force, killings during election-related clashes, and accidental killings. For example, in the South Kivu Province town of Panzi, three FARDC soldiers allegedly attempting to intimidate a civilian by firing into the air, accidentally shot him in the chest, killing him on June 8, 2006. In the Equateur Province town of Bumba, a mob burned 32 polling stations on October 29, 2006 after bullets fired by security forces attempting to restore order accidentally killed a 15-year-old boy and wounded another person. The incident occurred after security forces responded to a crowd beating the president of a voting center, who they believed had stuffed ballot boxes. There were no reports of authorities taking action against the security personnel involved. Finally, Colonel Simba Hussein, who was sentenced to death for killing a civilian who refused to change the colonel's tire in July 2005, was transferred to a prison in another province, from which he was paroled during the year. There were unconfirmed reports that he had returned to active service by year’s end.


82 Id. at 9.

83 Id. at 10.
personnel.” As far as child rights violations are concerned, the FARDC and PNC have been reported to be “the main perpetrators, responsible for 50 percent (FADRC) and 19 percent (PNC) of documented violations of children’s rights.” Finally, armed gangs and militias “are responsible for the other 30 per cent of reported violations.” In fact, “the presence of children among FARDC integrated and non-integrated brigades and the militia groups remains high.” Thus, there is no doubt that the FARDC continues to exhibit the same behavioral characteristics as Mobutu’s ANC and FAZ.

This historical and continuing culture of corruption, unprofessionalism, and maltreatment of the population must be regarded as a cancer infecting the DRC military. Unless and until this cancer is excised, the military will remain the dominant destabilizing force in the DRC’s efforts to develop a ROL-based society. Therefore, transforming the FARDC is an absolutely essential prerequisite for the rehabilitation of the DRC. A foundation of professional military values, embraced by military leaders and instilled in the rank and file, must be inculcated into the FARDC to achieve this goal. Before discussing how this transformation may take place, it will be necessary to examine the events that led to the ascension of Joseph Kabila to power and his election to the presidency of the DRC through transparent and freely held elections in 2006. The


86 Id.
87 Id. at 5.
reader will thus be able to understand the socio-political environment of the DRC and the magnitude of what must be done to transform the FARDC.

Section II. The Ascension to Power of Joseph Kabange Kabila

The ouster of President Mobutu from power in 1997 shocked millions of people, especially the Congolese watching the events unfold like a work of fiction on their television screens. After 32 years of a ruthless and kleptocratic dictatorship,88 Mobutu was toppled from power by Mzee89 Laurent-Désiré Kabila (LDK or Mzee Kabila), a former rebel leader who had once led a Marxist insurgency in Eastern DRC with the assistance of China and Cuba90 during

88 NZONGOLA, at 260 (indicating “Mobutu . . . proceeded to build an externally backed kleptocracy”). While this author refers to the regime led by Mobutu and his cronies in the DRC as a “kleptocracy” (a government by thieves), at least one other Congolese writer refers to it as a “predatory” regime or system of governance by predation. See MBAYA J. KANKWENDA, L’ÉCONOMIE POLITIQUE DE LA PREDATION AU CONGO KINSHASA, DES ORIGINES A NOS JOURS 1885 – 2003 [hereinafter MBAYA] (In this book, Professor Mbaya contends that the system of “predation” established by King Leopold II of Belgium in “Congo Free State” survived him and continued to be practiced in the DRC by the Belgian colonial administration as well as the Mobutu and pre-2006 Kabila regimes. This predatory system institutionalized the pillaging of the natural, financial and human resources of the DRC. According to Professor Mbaya, the situation has remained the same in the DRC in spite of the passage of King Leopold II of Belgium because the DRC has remained a vast field for international plundering of its natural resources under the control of a few political tarzans and their internal and especially external networks).

89 The term “Mzee” is a Kiswahili (Swahili) word meaning old, elder, or wise. In this context, LDK anointed himself “Mzee,” meaning “the Wise Old Man,” in contradistinction to Mobutu who called himself “le Guide/Timonier” (Helmsman). See YOUNG AND TURNER, at 397 (explaining that under Mobutu, Zaire became a state “whose apotheosis was constitutional enshrinement of ‘Mobutism’ as the national ideology and which was expressed by an imposing array of praise-names for the President: ‘Guide,’ ‘Timonier’ (helmsman), ‘Président-Fondateur,’ ‘Mulopwe’ (emperor with overtones of divinity), and finally even ‘Messiah.’”). To be fair, LDK and Mobutu are not the only African leaders who imposed a nickname for themselves. In black Africa, it is commonplace for presidents to turn themselves into god-like figures by adopting a nickname designed to convey a desired image and serve as the basis for a cult of personality. Thus, in addition to the late Mobutu and LDK of Zaire/DRC, the late Julius Nyerere of Tanzania was referred to as “Mwalimu” (teacher), the late Banda of Malawi as “Chief of Chiefs,” the late Houphouët-Boigny of Ivory-Coast as “the Number One Peasant,” the late Macias Nguema of Equatorial Guinea as “the National Miracle,” and even the late Idi Amin Dada of Uganda as “the Conqueror of the British Empire.” Finally, the late Eyadema of Togo shared the nickname of “Guide/Timonier” (Helmsman) with Mobutu while Kabila inherited the nickname of “Mzee” from the late Jomo Kenyatta of Kenya. See DAVID LAMB, THE AFRICANS 48 (Random House, 1982).

90 JON LEE ANDERSON, CHE GUEVARA, A REVOLUTIONARY LIFE, 630-69 (Grove Press, 1997) (describing the 1964 disastrous Cuban expedition led by Che Guevara in the DRC in support of LDK’s Marxist rebellion in Eastern Congo. When Che reportedly met LDK in Dar-Es-Salaam, he apparently was perturbed by the fact that LDK, who
the 60’s and 70’s. Mzee Kabila and his rebel forces\textsuperscript{91} received crucial logistical and military support from the armies of Angola, Zimbabwe, Rwanda and Uganda whose well-trained and capable officers led rebel combat operations against Mobutu’s army inside the DRC. This enormous historic change in Central Africa was an unexpected outcome of the end of the cold war, which robbed Mobutu of his darling-of-the-west strongman status\textsuperscript{92} when capitalism triumphed over communism. Since the DRC’s independence from the Kingdom of Belgium in 1960 and throughout most of Mobutu’s 32 long years in power, western governments had supported him unfailingly with money and military equipment. For example, when Mobutu visited the White House in his capacity as Chief of Staff of the Congolese Army in 1963 after Lumumba had been assassinated, “[President] Kennedy gave him an airplane for his personal use – and a U.S. Air Force crew to fly it for him.”\textsuperscript{93} Reportedly, in 1965 the United States professed to be a Marxist, was driving around in a Mercedes-Benz. After spending a few days working with LDK’s rebel troops in Eastern Congo, Che confessed to his Cuban comrades that winning “a war with such troop, . . . [was] out of the question.” According to Che, the leaders of the rebellion did not show up to the front and there was a widespread belief in witchcraft among rebel fighters. As a result, they did not fight, “had no sense of discipline or sacrifice.” Che also reported that LDK’s rebel fighters were heavy drinkers and “the spectacle of reeling men having fights and disobeying orders was distressingly commonplace”).

\textsuperscript{91} The rebel forces assembled in the so-called “Alliance des Forces Démocratiques pour la libération du Congo (AFDL),” which was a coalition of political dissidents and other ethnic minorities opposed to veteran Dictator Mobutu. The AFDL designated LDK as their Spokesperson. The military assistance of President Kagame of Rwanda and President Museveni of Uganda during the 1996-97 military campaign to topple veteran dictator Mobutu from power reportedly received prior approval from Washington. Presidents Kagame and Museveni have been ever since Washington’s post-cold war friends in central Africa. Although the AFDL successfully toppled Mobutu from power at the conclusion of their 1996-97 military campaign, it later succumbed to internal tensions between LDK and his former allies and supporters, i.e., Uganda and Rwanda. The rift between LDK and his former allies ultimately triggered the second rebellion in the DRC on or about Aug. 02, 1998.

\textsuperscript{92} GERMAIN MUKENDI & BRUNO KASONGA, KABILA, LE RETOUR DU CONGO, 33 (EDITIONS QUORUM, 1997) [hereinafter MUKENDI & KASONGO] (stating: “. . . le soutien occidental. Le Chef de l’Etat Zaïrois a bénéficié d’un soutien sans commune mesure avec ses capacités. Il est devenu le gendarme de l’Occident en Afrique. C’est avec lui et par lui que furent exécutés divers coups d’Etat dans les pays voisins . . . . Il y a aussi . . . le soutien aux troupes rebelles contre le gouvernement angolais. . . .” \textit{translated into English as}, . . . “western support. The head of the Zairean State enjoyed western nations’ support that was second to none, well beyond his abilities. He became the policeman for the West in Africa. It was through him and by him that the various military coups were executed in neighboring countries . . . There is also the support provided to rebel troops against the Angolan government . . .”).

\textsuperscript{93} HOCHSCHILD, at 302-303.
encouraged Mobutu to stage a coup d’état that made him the country’s dictator for more than thirty-two years.\textsuperscript{94} This was Mobutu’s second military takeover of the government in the DRC supposedly with the support and counsel of the U.S. Government, the first having occurred in 1960.\textsuperscript{95} It should be noted, in all fairness, that while some officials within the U.S. Government may have encouraged Mobutu’s coups d’état in the sixties, it was impossible for them to know in advance that he would become a ruthless and predatory dictator for more than 30 years. The U.S. Government also deserves some credit for opposing the partition of the DRC, for it is highly probable that the bid for secession mounted by the then-breakaway provinces of Katanga and Kasai would have succeeded at the time, but for Washington’s refusal to go along. In any event, Mobutu also received from the United States “well over a billion dollars in civilian and military aid during the three decades of his rule.”\textsuperscript{96} European countries, led by France, gave him even more.\textsuperscript{97} Finally, in two memorable instances, France and Belgium intervened militarily\textsuperscript{98} in Zaire in 1977 and again in 1978, supposedly with U.S. acquiescence and limited logistical

\textsuperscript{94}HOCHSCHILD, at 303, accord, YOUNG & TURNER, note __, at 53 (asserting that “the American embassy certainly had advance knowledge of the coup and encouraged the takeover”); \textit{but see DEVLIN}, note __ at __ (denying that the U.S. Government had advance notice of Mobutu’s 1965 coup d’etat and asserting that Mobutu placed the U.S. Government before “un fait accompli”).

\textsuperscript{95}LARRY DEVLIN, CHIEF OF STATION, CONGO, 1960-67, 76-85 (describing how the CIA Chief of Station in Kinshasa threw the United States Government’s support behind Mobutu’s September 14, 1960 coup d’état which subsequently enabled Mobutu to emerge as the most powerful person on the Congolese political scene. After “neutralizing” (placing under house arrest) both Premier Lumumba and President Kasavubu, Mobutu installed a government consisting of Congolese college graduates as cabinet ministers known as “commissars.” Due to legitimacy concerns, however, the CIA immediately advised Mobutu to “de-neutralize” Kasavubu and reinstate him as President. He did as advised. Subsequently, Kasavubu served as a figurehead President while Mobutu called all the shots until Kasavubu was removed by Mobutu from power for good in 1965).

\textsuperscript{96}HOCHSCHILD, \textit{supra} note 26 at 303; \textit{see also} MUKENDI & KASONGA, \textit{supra} note 25 at 34 (claiming that the U.S. Government never hesitated to shower Mobutu with millions of dollars to show its support for his regime).

\textsuperscript{97}HOCHSHILD, at 303.

\textsuperscript{98}NZONGOLA, at 182-83 (discussing the two Shaba wars of 1977 and 1978 led by the Front de libération nationale du Congo (FNLC) based in Angola. The first was ended thanks to the intervention of French and Moroccan troops on Mobutu’s side while the second resulted in Mobutu’s victory attributed in part to the intervention of Belgian and French paratroops).
support. Mobutu’s kleptocratic dictatorship in Zaire would have been short-lived, but for the crucial support he received from western governments in return for his allegedly being their point man against the spread of communism in Central Africa. After the fall of the Berlin Wall, however, western governments no longer needed Mobutu to help them implement western policies and achieve western geopolitical objectives in the region. As a result, western leaders had no trouble dumping him and allowing LDK to become the new Master in Congo-Kinshasa.

99 INSERT REPORTS ON EVIDENCE OF US LOGISTICAL SUPPORT.

100 MICHAEL G. SCHATZBERG, MOBUTU OR CHAOS, THE UNITED STATES AND ZAIRE, 1960-1990, 70-71 (Univ. Press of America, Inc. 1991) (explaining why US policy makers strongly supported Mobutu. According to Schatzberg, US policy makers since 1960 made the following assumptions: “only a strongman can hold Zaire’s many ethnic groups together in the framework of a contemporary state; second, without such a leader Zaire will descend into chaos, provoking a major international crisis; and third, this will provide advantages and opportunities for adversaries of the United States in the cold war. . . . Mobutu’s presence is thus essential in preventing Zaire from a destabilizing slide into chaos with its corollary of Soviet involvement. The shorthand translation of these perceptions into a policy argument is the starkly dichotomous phrase, ‘Mobutu or chaos.’”). It should be noted that the Franco-Belgian interventions in 1977-78 with US logistic support ultimately saved Mobutu’s tyrannical regime from being overthrown by former Katangese gendarmes who had been based in Angola since the end of the first Congolese civil war that erupted in the DRC after the assassination of Premier Lumumba in 1961.

101 HONORE NGBANDA NZAMBO, CRIMES ORGANISÉS EN AFRIQUE CENTRALE, RÉVÉLATIONS SUR LES RÉSEAUX RWANDAIS ET OCCIDENTAUX, 185 – 186 (Editions DUBOIRIS, 2004) (stating “la chute du mur de Berlin annonça la fin de la guerre froide et quelques années après, le pouvoir changea de main à Washington . . . Bill Clinton n’ira pas par quatre chemins pour dire ce qu’il pense du Président Mobutu. . . . Son Ambassadeur à Kinshasa, Melissa Wells dit au Maréchal Mobutu: ‘L’époque où nous avions besoin de vous est finie; la guerre froide est finie; vous n’avez plus d’instrument de chantage sur nous; et vous n’avez plus vos amis à la Maison Blanche pour vous couvrir. Si vous n’acceptez pas d’appliquer notre schéma de changement démocratique, nous allons vous forcer à quitter le pouvoir. Nous en avons les moyens.’”), translated into English as, “The fall of the Berlin Wall signaled the end of the cold war and a few years later, power changed hands in Washington. . . . Bill Clinton no longer felt restrained to conceal his feelings about President Mobutu. . . . His ambassador in Kinshasa, Ms. Melissa Wells, informed Marshall Mobutu: “the era during which we needed you is gone; the cold war is over; you can no longer blackmail us; and you no longer have your friends at the White House as your shield. If you don’t agree to implement our agenda for democratic change, we are going to oust you from power. We have the means at our disposal to do so”); MUKENDI & KASONGA, supra note 25 at 201 (in his 6 December 1993 open letter to veteran dictator Mobutu, then-rebel leader LDK accurately noted: “. . . avec la disparition des etats du bloc de Varsovie, . . . Belgique, USA, France, joints par la CEE ainsi que par la communauté d’autres nations, à l’exception des Etats africains . . . n’hésitent plus et te disent publiquement, qu’ils ne voient pas en toi le rempart dont ils avaient besoin pour combattre un ennemi lointain que tu n’as pas vaincu, ou l’imaginaire qui ‘menaçait leurs intérêts.’” translated into English as, “. . . with the demise of the Warsaw Bloc, Belgium, USA, France, joined by the CEE and the community of other nations, with the exception of African states . . . don’t hesitate to tell you they no longer see in you the bulwark that they needed in order to defeat a remote enemy whom you did not defeat, or the imaginary that threatened their interests”).
In February 1997, then-rebel leader LDK appeared before a gathering of approximately 10,000 people in Bukavu, the capital city of the province of South-Kivu, and asked them to support his new army in the Congo. LDK assured the crowd that his new Congolese army would not steal people’s goods or property and that they would instead take care of the Congolese people. However, for reasons that will be explored below, LDK’s words were empty, his promises chimerical. Under Mzee Kabila, no fundamental change occurred in the behavior of Congolese soldiers, nor had Congolese soldiers appeared to understand or accept the proper role of the armed forces in a democratic society.

The substitution of LDK for Mobutu was the epitome of irony and a recipe for disaster in the DRC for several reasons. Firstly, LDK was not a Congolese politician or scholar and had no training in western economic theory and/or political thought; instead, he had been China’s longtime protégé whose political thinking and ideological perspectives appeared to have been frozen in time. Starting in the 1990’s, most Congolese politicians realized that the cold war was over, with the West clearly emerging as the winner. However, when he took over the reins of power in Kinshasa in May 1997, Mzee Kabila appeared to have lived in political hibernation since 1960. He remained steadfastly faithful to his old connections with China and Cuba, unimpressed by the sea change that had transformed the international landscape when the Berlin Wall fell in 1989.

Secondly, after Mobutu’s humiliating flight from Kinshasa in May of 1997, Mzee Kabila entered Kinshasa triumphantly, proclaimed himself Head of State, and established a “public
salvation government.” He also dissolved the AFDL,\(^\text{102}\) the very same Rwanda-backed Congolese rebel group that had helped him to seize power. Following the dissolution of the AFDL, Mzee Kabila immediately issued Presidential Decree-Law No. 003\(^\text{103}\) by which he suspended the Mobutu-era Constitution and imposed a one-man rule, just as Mobutu had done when he seized power through a bloodless coup d’état in 1965. Decree-law No. 003 was the instrument by which Mzee Kabila arrogated to himself all executive, legislative and judicial powers. Finally, like Mobutu, Mzee Kabila unilaterally renamed the country by substituting the name Democratic Republic of Congo (DRC) for Zaïre.\(^\text{104}\) It is safe to postulate most Congolese people would agree that the DRC is the legitimate and rightful name of their country. The vast majority would not have objected to restoring the country’s original name, had Mzee Kabila consulted them in some fashion. However, the manner in which the return to the original name was accomplished by Mzee Kabila was clearly undemocratic and very much reminiscent of Mobutu’s dictatorial style of governance.

\(^{102}\) See supra, note 89. Although the AFDL successfully toppled Mobutu from power at the conclusion of their 1996-97 military campaign, it later succumbed to internal tensions between LDK and some of his former allies and supporters, i.e., Uganda and Rwanda. The rift between LDK and some of his former allies ultimately triggered the second rebellion in the DRC on Aug. 02, 1998.


\(^{104}\) See supra, note 1. Upon embracing a pro-Africa cultural awareness policy in 1971, Mobutu unilaterally changed the name of the country by substituting the name “Zaïre” for its original name of “Democratic Republic of Congo.” Mobutu also decreed that the Congolese people substitute all names of foreign origin for names that were “authentically” African. He termed this new policy “la Politique du Recours à l’Authenticité” (Authenticity Policy, meaning African cultural awareness policy). Leading by example, veteran dictator Mobutu replaced his name of Joseph-Désiré Mobutu with that of Mobutu Sese Seko Kukungbendu Wazabanga, for which he and his supporters offered multiple translations, including "the all-powerful warrior who, because of his endurance and inflexible will to win, will go from conquest to conquest leaving fire in his wake", or "the earthy, the peppery, all-powerful warrior who, by his endurance and will to win, goes from contest to contest leaving fire in his wake," or "the man who flies from victory to victory and leaves nothing behind him." See Wrong, at ___; also available at http://www.plexoft.com/SBF/N04.html#Sese.
The imposition of one-man rule by Mzee Kabila was a “déjà-vu” which should have immediately alarmed the majority of Congolese people. That it did not, however, is very understandable under the attendant circumstances because at the time the motto amongst most Congolese was: ANYBODY BUT MOBUTU; HE MUST GO! The nonchalance shown by the Congolese people in embracing Mzee Kabila as their new leader made it easy for the rest of the international community to unanimously recognize him as the DRC’s new Master.

Unfortunately, Mzee Kabila’s self-anointment and the recognition of his regime by foreign governments did not resolve the fundamental problem of the legitimacy of his power. Indeed, the question of legitimacy of power had eluded the DRC since the 1961 assassination of Prime Minister Patrice Lumumba by Mobutu and his friends, foreign and domestic. On August 2, 1998, some of Mzee Kabila’s former rebel comrades decided to challenge the legitimacy of his power by taking up arms again, this time against him. It was the beginning of “the world’s most lethal conflict since World War II.”105 This conflict was also described as “Africa’s World War”106 because it pitted armies from three African countries supporting Congolese rebel forces107 against Mzee Kabila’s ragtag army supported by troops from six other African countries.108 The belligerents waged this war for five long years during which well over four


106 JOURNALISTS’ NAME, Africa’s Great War, THE ECONOMIST, Jul. 4 2002 (stating “the widest interstate war in modern African history, it directly involved nine African nations, as well as about twenty armed groups, and earned the epithet of ‘Africa’s World War’ and the ‘Great War of Africa.’ An estimated 3.8 million people died, mostly from starvation and disease brought about by one of the deadliest conflicts since World War II. Millions more were displaced from their homes or sought asylum in neighboring countries”); Accord TIME, supra note ___ at 39. (The International Rescue Committee (IRC) estimates that 3.9 million people have died from war-related causes since the conflict in Congo began 1998).

107 Rebel forces and their leaders were supported by elements of the armed forces from Rwanda, Uganda, and Burundi.
million Congolese lost their lives to various causes, including disease and starvation as well as war crimes and crimes against humanity committed by belligerents on all sides.\textsuperscript{109}

In January of 2001, as the war continued to ravage the country and cost more innocent lives with no clear winner in sight, Mzee Kabila was assassinated by one of his own body guards.\textsuperscript{110} His sudden death caused a power vacuum in Kinshasa and posed a major legal and political problem in the DRC. While Presidential Decree-Law 003 had suspended the Mobutu-era Constitution, it did not provide for any line of succession in the event of Mzee Kabila’s death or incapacitation. Therefore, Presidential Decree-Law 003 and all the powers that Mzee Kabila had arrogated to himself through it were interred with him in his tomb. This explained why Mzee Kabila’s inner circle moved swiftly to designate Joseph Kabange Kabila, the deceased President’s son –at the time only 29 years old– to succeed his father as the only sure way to keep the regime in Kinshasa alive. This also explained why young\textsuperscript{111} Kabila pledged “allegiance to the nation” when he was sworn in as Head of State. It would have made no sense for him to pledge allegiance to the Constitution at his 2001 Head of State investiture ceremony because none was in effect at the time.

\textsuperscript{108} The Central Government of Mzee Kabila in Kinshasa was supported by the armed forces elements from Angola, Zimbabwe, Namibia, Libya, Tchad and Sudan.

\textsuperscript{109} HOCHSCHILD, at 316 (stating “the war’s death toll was almost four million, and more than two million people were refugees. Few of the dead have been soldiers. Most are ordinary men, women, and children, caught in the crossfire, unlucky enough to have stumbled onto land mines, or forced to flee their homes for forests or for crowded refugee camps that turn into fields of mud in the rainy season.”).

\textsuperscript{110} Mzee Kabila was shot during the afternoon of January 16, 2001 by one of his own body guards, Rashidi Kasereka, who was also killed. His son, Joseph Kabila, became President ten days later.

\textsuperscript{111} In this paper, the terms “Head of State” or the adjective “young” are used to describe Joseph Kabange Kabila after he was designated by his father’s inner circle to serve as Head of State/President up until he won fair and square the second round of the 2006 presidential election. We refer to him as President only after he emerged as the undisputed winner of the 2006 presidential election in the DRC.
Although the international community and the majority of Congolese in non-rebel-held territory, including Kinshasa, voiced virtually no opposition to young Kabila succeeding his father, the decision by Mzee Kabila’s inner circle to make him DRC’s new Head of State in this fashion was clearly undemocratic. It is not known with certainty who exactly ordered Mzee Kabila’s assassination. Some Congolese continue to suspect Mzee Kabila’s former foreign allies of masterminding his killing\textsuperscript{112} while others believe the assassination was an attempted coup d’état that Mzee Kabila’s inner cycle successfully foiled.\textsuperscript{113} To some extent, the sympathy of the Congolese people in non-rebel-held territory and in Kinshasa for the slain leader made it possible, in substantial part, for young Kabila and his father’s inner circle to successfully hang on to power without a bloodbath or mass demonstrations in Kinshasa.

Sadly for the DRC, young Kabila’s ascension to leadership further aggravated the question of the legitimacy of power in the country. The young, inexperienced and unelected Head of State inherited a country whose crisis was manifest on all fronts. The war was almost in its third year, with large regions of the country under the effective control of rebel warlords. For

\textsuperscript{112} NZONGOLA, supra, at ___ (It is unknown who ordered the killing but most feel Kabila's allies were to blame as they were tired of his duplicity, in particular his failure to implement a detailed timetable for the introduction of a new democratic constitution leading to free and fair elections. While Angolan troops were highly visible at Kabila's funeral cortege in Kinshasa, the smoothness of the transfer of power has led to speculation that the slain President’s allies may have approved his assassination).

\textsuperscript{113} Following Mzee Kabila’s assassination, the new regime in Kinshasa proceeded to round up well over hundred people alleged to have been involved in the failed coup d’état. Mzee Kabila, who may or may not have been still alive after being shot, was flown to Zimbabwe for medical treatment. His death was confirmed in Harare on January 18, 2001. One week later, his body was returned to Congo for a state funeral and his son, Joseph Kabila, became Head of State. The investigation into the assassination led to well over 130 people being tried before a special military tribunal. The alleged ringleader, a Kabilacousin named Colonel Eddy Kapend, and 25 others were sentenced to death in January 2003. Of the other defendants 64 were jailed, with sentences from six months to life. The remaining 45 were exonerated. [FIND OUT WHETHER THE DEATH SENTENCES WERE EVER CARRIED OUT].
example, Kinshasa had virtually no control of the country’s eastern and northeastern regions where rebel forces and warlords reigned supreme with the logistical support provided by the neighboring countries of Burundi, Rwanda and Uganda. The only saving grace for the Kinshasa regime in eastern and northeastern regions was the Mayi Mayi fighters who were led by, among others, two brave sons of Congo: Mayi Mayi commanders Dunia and Padiri. Working in concert, these Mayi Mayi commanders successfully organized their Mayi Mayi warriors into an effective resistance movement against foreign occupation, fiercely opposed to the presence of Rwandan and Ugandan troops anywhere in DRC Eastern provinces. The Mayi Mayi fighters’ determination to ferociously challenge the presence of Rwandan troops in the DRC through armed struggle and the sustained hostility shown by the Congolese populations towards the invading Rwandan/Ugandan troops proved to be a major contribution to Kinshasa being able to deny Congolese warlords and their foreign supporters complete control in the disputed regions of the country. Apart from the ongoing war and insecurity in the country, the young and unelected Head of State faced other equally tough challenges. The Congolese people and the

114 The term “Mayi” is a distortion of the Kiswahili word “maji,” which means “water.” Before joining the resistance movement, these fighters were told to bathe in some type of special water whose magical power would render all bullets ineffective against them, thus transforming these fighters into anti-bullet fighters on the battlefield. Finally, the informed reader of African independence movements should not confuse the Congolese Mayi Mayi fighters with the Mau Mau fighters of the late President Jomo Kenyatta of Kenya who fought heroically against the British royal forces in the fifties and sixties for the independence of Kenya, which they ultimately won on December 12, 1963.

115 Dunia and Padiri as well as many of their Mayi Mayi warriors under their command have joined the new Congolese National Army. They were recently promoted to the rank of Major General by President Kabila.

116 Some of these challenges raised the following questions: (1) what type of relationship was the young Head of State going to have with western governments? Specifically, would he be guilty of the same political hibernation, ignorance or myopia that Mzee Kabila clearly demonstrated when he snubbed the West in his first few months in power by visiting Cuba, China and Libya to underscore his long-held distrust of the west? (2) Was young Kabila prepared to urge the convening of the Inter-Congolese Dialogue and would he be willing to recognize and support the legitimacy of the conclusions reached by that Dialogue, including the agreed upon legal, institutional and political framework, and a transitional government of national unity? (3) What were his views on the twin-questions of disengagement and withdrawal of all foreign troops and the deployment of peacekeeping forces in the DRC? (4) How was young Kabila going to bring about the demobilization and demilitarization of armed militias present in the DRC? (5) Was he going to lift the ban that his father had placed on political activities in the DRC? (6) Would he be willing to free political opponents and prisoners of conscience that his father had thrown in jail? (7) Finally, was
international community waited to see how he would tackle those challenges and the answers the unelected Head of State would provide.

It was once written: “to aspiring hearts, valor is not measured by the count of years.”\textsuperscript{117} In spite of his youth and inexperience, young Kabila proved to be by far tougher, and even more politically pragmatic and astute than his father. Soon after being appointed Head of State by his father’s inner circle, he wasted no time in traveling to Paris, Brussels and Washington in search of support for, and recognition of, his government. By traveling to these key western Capitals, young Kabila sent a powerful message to his supporters and foes that he was unlike his father and that he was determined to chart a different course in the DRC. Young Kabila also signaled his desire to start a national dialogue to end the war,\textsuperscript{118} initiate the process of national reconciliation,\textsuperscript{119} and undertake the reconstruction of his mineral-rich but cash-strapped country.\textsuperscript{120} Unlike his father who stubbornly refused to speak to rebel leaders until all foreign backers had left the territory of the DRC, young Kabila signaled his willingness for discourse with Congolese rebel warlords and their supporters in pursuit of a negotiated outcome for the

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\textsuperscript{117} PIERRE CORNEILLE, LE CID (aux âmes bien nées, la valeur n’attend point le nombre des années), translated into English by JOHN CAIRNCROSS THE CID/CINNA, THE THEATRICAL ILLUSION 50, 281 (PENGUIN GROUP 1975).

\textsuperscript{118} Joseph Kabila’s 2001 Speech as Head of State following his Father’s Assassination, available at http://www.irinnews.org/IndepthMain.aspx (“This is how we are going to work for a policy that gives preference to dialogue and reconciliation . . . . In this direction, in agreement and consultation with the allied countries that are supporting us in facing up to this aggression, we will examine ways and means to revive the Lusaka Accord so that it can lead not only to an effective cease-fire, but also bring back peace to the Great Lakes Region”).

\textsuperscript{119} Id.

\textsuperscript{120} Id.
Young Kabila’s attitude throughout the transition period validated the old Chinese proverb that a handful of patience is worth more than a bushel of brains. Above all, young Kabila proved to be a skillful negotiator whose youth and inexperience were immensely compensated by his unmatched “thick skin” and an unparalleled calm demeanor. These attributes served him well as he engaged volatile and often condescending foes in extremely explosive situations in search of a negotiated solution to the DRC civil war. His efforts culminated in the formation of a transition government consisting of young Kabila as President/Head of State and four Vice-Presidents, including JP Mbemba, his fiercest foe and rebel warlord supported by President Museveni of Uganda.

On July 29, 2006, the DRC held a first round of presidential elections, which was followed by the second round on October 29, 2006. These elections represent the most defining moment in the history of the DRC since the assassination of Premier Emery Patrice Lumumba, the only truly popularly elected leader of the DRC before the 2006 presidential elections. These 2006 presidential elections in the DRC constituted the first step towards the resolution by the Congolese people of the question of legitimacy of power within the Government of the DRC since the assassination of Premier Lumumba. Although some Congolese leaders and their supporters attempted to derail President Joseph Kabila’s bid for the presidency by claiming that he is not Congolese, these charges were unsuccessful in keeping him from becoming the freely elected President of his ailing nation.

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121 The war formally ended in July 2003 with an agreement by the former belligerents to create a government of national unity.

122 African Business, Kabila II – Unravelling the enigma (March 2001) available at http://www.africasia.co.uk/archive/ab/01_03/cover1.htm. During the election, President Kabila’s political foes and detractors spread many rumors and stories about his genealogy and citizenship. According to one such story, President Kabila would be a Rwandan national, reportedly having been born of a
No one can predict how post-election President Kabila and his team will govern the DRC, or the report card they will receive from the Congolese people at the end of their first term in Year 2011. For the time being, however, President Kabila deserves great credit if only for his willingness to be his own man and his ability to forge a winning coalition, in spite of his youth and the barrage of persistent, personal attacks questioning his Congolese nationality. Above all, his name will certainly appear in the pages of history for being the second man ever popularly elected in the DRC through fair and transparent elections. The question now is how President Kabila intends to move the country forward. Will President Kabila and his team agree to undertake the tough task of transforming the Leopoldian army that they inherited from Mobutu into a true citizen army? Are they ready and willing to give the DRC an army consisting of officers and soldiers sworn solely to protect the Constitution of the Republic, serve and protect Rwandan father who allegedly was a friend of Mzee Kabila. According this story, when President Kabila’s biological Rwandan father passed away, Mzee Kabila allegedly adopted the child as his own after marrying his mother. Notwithstanding this and such other stories that were aimed at smearing President Kabila, there is plenty of evidence which has convinced the author to conclude that President Kabila is a Congolese. Firstly, it was widely reported during the 1996 rebel war effort that one of the rebel commanders was the son of Mzee Kabila. None of President Kabila’s foes ever contradicted the reports at the time. Secondly, Mzee Kabila himself referred to Joseph Kabila as his son and introduced him to the Nation as such. Again, no one ever challenged Mzee Kabila’s assertions while he was alive. Third, Mzee Kabila designated Joseph Kabila to serve as Deputy Chief of Staff and, subsequently, promoted him to the position of Chief of Staff of the armed forces after firing General Kabarehe, who was believed to be Rwandan. Again, no one objected at the time. More importantly, it would have been illogical for Mzee Kabila to replace a Rwandan with another Rwandan at the time he needed to purge his general staff of all Rwandan elements who constituted a grave danger to his survival and that of his regime. Fourth, upon Mzee Kabila’s assassination in 2001, his inner circle consisting of many well-known Congolese patriots of unquestioned nationality appointed Joseph Kabila as Head of State. It is utterly pueril to even suggest that well-known Congolese “bana mboka” such as former Vice-President Yerodia, former Minister of Interior Gaetan Kakudji, former Minister of Justice Mwenze Kongolo, and the late legendary General Sylvain Lwesha would have selected a Rwandan as the Head of State of their beloved DRC. There would be no greater act of treason that such hardcore “bana mboka” would have committed! Assuming, arguendo, Joseph Kabila as adopted by Mzee Kabila, as alleged, he still would be a Congolese “à part entière” because adoption is a procedure available in all legal systems and practiced virtually in all countries, including the DRC, for establishing a lawful child-parent relationship with legal rights and obligations resulting therefrom. Finally, the fact that Ngoma, JP Mbemba, Rhuberwa and Yerodia agreed to serve as Young Kabila’s Vice-Presidents during the transition period suggest all four individuals acknowledged Joseph Kabila is Congolese. For these reasons, the author would like to take this opportunity to urge all Congolese to put this debate behind them because it is un-African and at this point obsolete. In fact, even veteran dictator Mobutu once declared, to his credit, that there were no illegitimate children in the DRC; there were only illegitimate parents!
its citizens, and respect their rights? Or, will President Kabila and his allies seek to establish another presidential militia with intent to use it as a political force to intimidate citizens and eliminate political opponents?

Having thus reviewed the prevailing socio-political environment in the DRC today, this Paper will now offer a brief review of the doctrinal foundations of an effective military establishment, its nature and unique role in a free society, and explain the DRC’s need for reform of its armed forces and military justice system.

Section III. The Doctrinal Foundations of an Effective Military and the Need for a Truly Separate Military Justice System in the DRC

It is not possible to comprehend the unique role of an accountable and effective military organization in a democratic society without first identifying and understanding the importance of its time-honored doctrinal foundations: good order and discipline. This section briefly examines the importance of these doctrinal foundations. Secondly, it discusses the nature and unique role of an effective military organization in a democratic society and argues that a basic understanding of that role is a prerequisite to the success of measures designed to improve the organization and performance of any military establishment. Thirdly, the author shall explain the need for fundamental reform of the DRC Military Justice System. Finally, this section proposes that the conduct of the Congolese men and women in arms must be subject to an effective, adequate and truly separate system of military justice.

A. The Importance of Good order and Discipline
Good order and discipline\textsuperscript{123} are to an effective and responsible armed force what the glue is to the plywood. Good order and discipline are the means by which the cohesion of an effective and responsible force is ensured. Without good order and discipline, there can be no effective and responsible armed force; in fact, the whole military organization will simply crumble.\textsuperscript{124} We owe one of the earliest validations of this proposition to the experience of ancient China. A venerable Chinese king was once urged by his generals to attack an enemy. However, the king had little faith in his generals and refused to order his army into battle for fear that it would completely be annihilated by the enemy. The generals recommended that the king seek a second opinion from Sun-tzu\textsuperscript{125} who was known at the time (and to this day) for his mastery of military strategy. Below is a brief account of the alleged discourse between Sun-tzu and the Chinese king:

\begin{quote}
[T]he king questioned Sun-tzu about military strategy, and each time that he laid out a section of his book the king couldn’t praise him enough. Greatly pleased, he inquired: ‘If possible, I would like a minor test of your military strategy.’ Sun-tzu said: ‘it’s possible. We can conduct a minor test with women from the inner palace.’ The king said, ‘I agree.’ Sun-tzu said: ‘I would like to have two of your Majesty’s beloved concubines act as company commanders, each to direct a company.’ He ordered all three hundred women to wear helmets and armor, to carry swords and shields, and stand. He instructed them in military methods, that
\end{quote}

\textsuperscript{123} In the United States, the preamble to the Manual for Courts-Martial (MCM) indicates that one of the purposes of military law is to “assist in maintaining good order and discipline.” See MCM, para. 3, at 1-1.

\textsuperscript{124} DAVID B. RALSTON, THE ARMY OF THE REPUBLIC, THE PLACE OF THE MILITARY IN THE POLITICAL EVOLUTION OF FRANCE, 1871-1914, 13 (The M.I.T. Press 1967) [hereinafter RALSTON] (recognizing “it is a truism that no army can function effectively or even exist without discipline”); Lieutenant Colonel James B. Roan and Captain Cynthia Buxton, the American Military Justice System in the New Millenium, 52, A. F. L. Rev. 185 (2002) (“Nothing is more harmful to the service than the neglect of discipline; for that discipline, more than numbers, gives one army superiority over another.”), citing, George Washington, Letter of Instructions to the Captains of the Virginia Regiments (29 July 1759); Bradley J. Nicholson, Courts-Martial in the Legion Army: American Military LAW in The Early Republic, 1792-1796, 144 MIL. L. REV. 77, 80 (Spring, 1994) (stating: “[i]t was an observation founded in undoubted facts, that the prosperity of nations had been in proportion to the discipline of their forces by sea and land.”); Id. at 97 (observing “that it is a false notion, that subordination, and a passive obedience to Superiors [debases a man’s impulse to liberty or courage] – so far from it, that a General remark – that those Armies that have have been subject to the Severest Discipline have always performed the greatest things.”).

\textsuperscript{125} SUN TZU, THE ART OF WAR, translated by RALPH D. SAWYER at 80-82 (WESTVLEW PRESS 1994).
in accord with the drum they should advance, withdraw, go left or right, or turn around. He had them know the prohibitions and then ordered, ‘At the first beat of the drum you should assemble, at the second drumming you should advance with your weapons, and at the third deploy into military formation.’ At this the palace women all covered their mouths and laughed. Sun-tzu then personally took up the sticks and beat the drums, giving orders three times, and explaining them five times. They laughed as before. Sun-tzu saw that the women laughed continuously, and wouldn’t stop. Sun-tzu was enraged, his eyes suddenly opened wide, his sound was like a terrifying tiger, his hair stood on end under his cap, and his neck broke the tassels at the side. He said to the Master of Laws, ‘Get the executioner’s axes.’ Sun-tzu then said: ‘If the instructions are not clear, if the explanations and orders are not trusted, it is the general’s offense. When they have already been instructed three times, and the orders explained five times, if the troops still do not perform, it is the fault of the officers. According to the prescripts for military discipline, what is the procedure?’ The Master of Laws said: ‘Decapitation!’ Sun-tzu then ordered the beheading of the two company commanders, the king’s favorite concubines. . . . * * * He again beat the drum, and they went left and right, advanced and withdrew, and turned around in accord with the prescribed standards without daring to blink an eye. The two companies were silent, not daring to look around.126

This old Chinese military tale clearly illustrates the doctrinal importance of good order and discipline for any government desiring to possess an effective army. Marshal Maurice de Saxe of France concurred when he observed: “After the organization of troops, military discipline is the first matter that presents itself. It is the soul of armies [emphasis added]. If it is not established with wisdom and maintained with unshakable resolution you will have no soldiers.”127 General George Washington adopted Marshal de Saxe’s view by declaring that “[d]iscipline is the soul of an army. It makes small numbers formidable; procures success to the weak, and esteem to all . . . “128


127 Marshal Maurice de Saxe (1696-1750), My Reveries Upon the Art of War (published posthumously in 1757).

128 General George Washington, Instruction to Company Captains (July 29, 1757) in 5 PAPERS OF GEORGE WASHINGTON, Nov. 1756 – Oct. 1757 341, 344 (W.W. Abbot & Dorothy Twohig eds. 1984); accord, FM-1, at page 1-15 (summarizing the view expressed by General George S. Patton Jr regarding the need for discipline: “Discipline is based on pride in the profession of arms, on meticulous attention to details, and on mutual respect and confidence.
As discussed in the preceding Sections, the Congolese military has, since independence, been characterized by a lack of good order and discipline. Under the Third Republic, the Congolese Army desperately needs the emergence and leadership of a Congolese Sun-tzu to instill much needed discipline and inculcate into the ranks and file the time-honored values, standards, principles, rules of law and regulations that govern the noble profession of arms. This will require a radical mental shift towards a progressive attitude by Congolese soldiers and officers alike. However, no change of mentality in the armed forces of the DRC is possible unless Congolese military officers and soldiers truly understand and appreciate the inestimable value of a disciplined armed force to the blossoming and perpetuation of a democratic society.

B. The Nature and Unique Role of a Military Organization

The military must be, “by necessity, a specialized society separate from civilian society” and subordinate to civilian political control. This is no longer just a sanctimonious lesson of western democracies to Third World countries. Like their counterparts from developing nations in the former Soviet-controlled bloc and Latin America, Congolese military leaders should now realize that true democracy mandates the categorical prohibition of military intervention in civil affairs. No longer does the concept of “la Patria,” which was predicated

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Discipline must be a **habit so engrained** [emphasis added] that it is stronger than the excitement of battle or the fear of death.”

129 The first Congolese Republic was established on June 30, 1960 when the country earned its independence. The second Republic was established by Mobutu following his 1965 coup d’état.

130 *Parker v. Levy*, 417 U.S. 733 at 743, stating “the military is, by necessity, a specialized society separate from civilian society.”
upon the doctrine of necessity, have currency in the democratic world. Indeed, one of the most profound aspects of the widespread return to democratic rule throughout South and Central America in the 1980’s was the almost universal rejection of this concept by the armed forces of the region. In what may have seemed transparent to world political observers, the willingness of military leaders in South and Central America to keep their forces “in the barracks” had a profound enabling effect on regional democratization. The rejection of the paradigm of military intervention in domestic affairs renewed the determination of civilian political leaders to demand subordination of their armed forces to civilian control. The leverage imposed by the United States through both training and foreign aid incentives encouraged this trend. A new generation of military leaders emerged in South and Central America committed to the principle of civilian control of the military.

It is essential that this same model of military subordination to civilian control be followed in the DRC and in Africa. Under such a paradigm, the basic law governing the military

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131 The doctrine of necessity is based upon the idea that the armed force of a country has an independent obligation to intervene in domestic affairs when military leaders determine that doing so is in the best interest of the nation. This doctrine was successfully invoked by many dictators in Latin America, Asia and Africa to justify their takeover of executive power in their respective countries. Even Mobutu’s twin-coups d’état in 1960 and 1965 were predicated upon this doctrine. But see HUMAN RIGHTS LAW, INTERNATIONAL BAR ASSOCIATION SECTION ON LEGAL PRACTICE, NO. 8 (OCTOBER 2007, ARTICLE BY NOEL COX, FIJI: THE COUP D’ÉTAT AND THE HUMAN RIGHTS COMMISSION, AT PAGE 12 [HEREINAFTER HUMAN RIGHTS LAW NO. 8] (criticizing the Fuji Human Rights Commission for backing up the December 05, 2006 coup d’état in Fiji by Commodore Bainimarama, Commander of the Republic of Fiji Military Forces and stating: “[t]o allow –nay, to encourage –the armed forces of a country to assume a political oversight role, is highly dangerous and retrograde step. ** ** “to encourage the military to adopt the role of final arbiter is fraught with dangers.”).

“is that of obedience”\footnote{Parker, at 743.} to all manifestly lawful orders, and its supreme duty is to defend the Constitution, and protect the people and their legitimate government against all enemies, both foreign and domestic. The military must train and prepare to fight, and defeat the Nation’s enemies should the occasion arise. While other less traditional roles for the military are permissible, and in the life of a developing nation often essential, the military must accept these other roles as secondary. The military must adhere to the principle of limited and controlled involvement in domestic affairs ONLY at the call of the elected/legitimate civilian authorities. A nation’s “military constitutes a specialized community governed by a separate discipline from that of the civilian,”\footnote{Id.} and the individual rights of soldiers may be curtailed “to meet certain overriding demands of discipline and duty.”\footnote{Id.}

Obedience and discipline are the supreme attributes of an effective military organization. For the foot soldier, this means following all manifestly lawful commands of his or her immediate superior;\footnote{RALSTON, at 12 (In France, “there evolved the ideal of passive obedience to orders from above. Military honor was to be based not merely on the concept of personal fealty to the sovereign but also on the principle of absolute obedience pure and simple to whomever should be in position of supreme power.”)} for the high command, this means obeying the will of the elected/legitimate civilian leadership, even if the high command considers such will contrary to the best interests of the nation.\footnote{HUMAN RIGHTS LAW NO. 8 “The military owes its allegiance to the duly constituted civil authorities, and it is not for the armed forces to question the actions of the political leadership, or to purport to sit in judgment upon them.” However, there are limits to civilian control of the military. When a nation’s high command genuinely feels that the decisions of the elected civilian national leaders are extremely bad and not in the best interests of the nation, the} These essential precepts enable a military organization to most
effectively carry out its mission. The Supreme Court of the United States once remarked, “[n]o question can be left open as to the right to command in the officer, or the duty of obedience in the soldier.” A commander’s decision to place individuals in harm’s way is not subject to debate and a vote by soldiers placed under his command. In constitutional terms, the law of obedience requires that military leaders and their soldiers accept the principle of civilian oversight over the military. The constitutional function of the Supreme Commander of the armed forces must belong to the top elected official in the country, not the top commanding general. The proper place of duty for a commanding general is neither in the presidential palace nor in the halls of the Nation’s legislature. A commanding general’s place of duty should be on the military installation or the battlefield, always among the troops. This, by no means, should be construed as a sweeping proposition that Congolese military leaders must blindly adhere to, or execute, even extremely bad or unlawful decisions of their civilian bosses. Should a nation’s high military command genuinely determine the decisions of the elected civilian national leadership are so extremely baleful that, if executed, the best interests of the Nation would be harmed, the proper response for high military command should not be the grabbing of power by force, as Mobutu did in 1960 and again in 1965; rather, the proper course of action by professional and patriotic military leaders in any such cases would be to tender resignation of their respective commissions in protest, if their sound advice consistent with the Nation’s best interests is not heeded by the national civilian leadership. This is the only proper course of action for the high command in all such rare cases because an otherwise blind adherence to, or

author suggests that the proper response for the high command is to resign their commission in protest in the event the high command’s advice is not heeded.


139 U.S. Constitution, Art. II (The President is the Commander-in-Chief);

140 REVIEW THE CONSTITUTION OF THE DRC FOR EXAMPLE OF SUCH CASES.
execution of, unlawful or unarguably deleterious decisions made by the national civilian leadership may undermine the very sovereignty of the country, not to mention visiting personal liability upon the compliant high command for international law violations, such as war crimes and/or crimes against humanity.

It is axiomatic that the military cannot perform its mission effectively without good order and discipline. The vehicle for imposing good order and discipline is an effective and accountable system of military justice. Good governance is still lacking in the DRC. The greatest obstacle to achieving a lasting legitimate civilian governance in the DRC today is the non-existence of a disciplined and militarily credible citizen army. Now is a golden opportunity for President Kabila and his team to solve once and for all this problem. However, it must be understood that the center of gravity for creating and nurturing such a professional citizen army in the DRC is an effective, accountable and truly separate military justice system. Consequently, it is necessary to examine the status of the DRC Military Justice System, its needs for fundamental reform aimed at establishing a truly separate and credible system for the administration of military justice and most efficacious means for achieving that end.

C. Why the DRC Military Justice System Needs Fundamental Reform

It is true that the author has lived abroad for many years. In 2007, however, he participated as a member of a team of U.S. military jurists sent to the DRC by the U.S. Defense Institute of International Legal Studies (DIILS) to assess the needs of the DRC Military Justice
Based upon the author’s past experience as a native of the DRC and the information that his team gathered during the DILLS missions to the DRC in 2007 and 2008, he has concluded that the Military Justice System in the DRC is, for all intents and purposes, far from being a model of legitimacy and professionalism. Instead, it is a flawed system reminiscent of Mobutu’s era during which it was plagued by systematic unlawful command influence. The DRC’s military justice system is a relic of the Belgian colonial rule that post-independence Congolese leaders, led by Mobutu, eagerly embraced and maintained for selfish reasons. The colonial rule archetype of a military justice system enabled such leaders to perpetuate their grip on military power and control over the country’s natural resources. The DRC military justice system’s political and philosophical underpinnings have remained substantially the same as in the era of Leopold’s Congo Free State. It is unlikely to work in its current design and organization as a vehicle for instilling good order and discipline in the FARDC ranks. Under these circumstances, it must now be dismantled in favor of a truly separate, effective and accountable military justice system. Such a modern military justice system will ensure good order and discipline within the military while at the same time providing the judicial safeguards and basic rights accorded soldiers in courts-martial conducted in democratic societies.

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141 In August 2007, the author was a member of a three-man team sent by DIILS to the DRC in August 2007. He and his colleagues spent two weeks gathering information from Congolese civilian and military officials. His team met with the Minister of Justice, the Minister of Defense, the “Auditeur Général” des FARDC, the first Presiding Judge of the High Military Court of the DRC, and many other officials to include members of the academia, members of the Supreme Council of the Magistrature, military judges and prosecutors at all levels, prison administration personnel, military criminal investigators, NGOs, etc. In 2008, the author returned to the DRC as a member of a DIILS team dispatched to oversee the training of DRC military prosecutors, judges and military criminal investigators on successful investigation and prosecution of sex crimes. Belligerents in the DRC had used sex crimes as a method of warfare throughout the five year civil war in the DRC from 1998 until 2003.

142 See KAMITATU, infra, at __ [Veteran dictator Mobutu single-handedly determined who had to be charged, how he was to be charged and tried; Mobutu also determined in advance which penalty the accused had to receive].

143 See supra at note __.
addition to the benefit of casting off the failed legacy of the Belgian colonial military “injustice” system, additional justifications exist to support such a fundamental reform. These include:

a. *The DRC civilian justice system is unreliable.* The civilian justice system in the Congo is in chaos and must be rebuilt from scratch. It lacks the characteristics of promptness, fairness, impartiality and credibility. Its physical infrastructure is totally decrepit and human capital unreliable. Above all, it has been plagued by the endemic corruption and nepotism so pervasive throughout governmental agencies under Mobutu. Therefore, it cannot be relied upon as an effective institution able to contribute to the cultural reformation so necessary for the DRC military. Nor can it be relied upon to dispense military justice effectively and maintain good order and discipline.

b. *The relatively small size of the DRC military makes it more suitable for a separate justice system.* In August 2007, at the request of the U.S. Department of State, the Defense Institute of International Legal Studies (DIILS) conducted a 2 week in-country assessment of the training and other needs of the DRC military justice system. The author was a member of that DIILS team. During that mission, the DIILS delegation learned that the size of the FARDC is approximately 100,000.144 The relatively small size of the Congolese military would make it easier to establish a truly separate and effective system of military justice than to rebuild a system of justice for the population at large. If successful, a change of mentality and attitude in the military toward acceptance of the rule of law145 and military subordination to legitimate

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144 DIILS Report, Military Justice System Assessment – Democratic Republic of Congo, 5 (10 September 2007). However, during his 2008 visit as head of a DIILS mission to the DRC the author learned that it is not possible to ascertain with accuracy the size of the FARDC. By some other estimates, the size of the FARDC is 300,000.

145 According to the United Nations Organization, “Rule of Law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers,
civilian authority may serve as a good barometer for gauging the receptiveness of the Congolese society to needed reform of the civilian justice system. More importantly, establishing a new and separate military justice system will contribute to the development of a sense of professionalism and pride within the FARDC. It will also create the opportunity to develop a core of military legal specialists able to contribute to the development of a professional military ethos throughout the institution.

c. Soldiers aren’t civilians! Their conduct is subject to a far broader range of criminal penalties. The difference between the military community and the civilian community and between the civilian law and military law requires the adoption of a military code of justice wholly separate and apart from a civilian criminal code. A military criminal code regulates aspects of conduct of military members, which in civilian life are not criminally regulated. While a civilian criminal code criminalizes a relatively small segment of potential human conduct, a military criminal code proscribes a far broader range of the conduct of military personnel. The broad scope of a military criminal code not only punishes clearly criminal conduct, but also fosters an orderly and dutiful military. For example, a military code imposes criminal penalties for disrespect toward superior commissioned officers, drunkenness on duty, cruelty, oppression or maltreatment of subordinates, malingering, and conduct unbecoming an officer and a gentleman, etc. Shaping behavior to avoid criminal charges leads inexorably to a more disciplined, dutiful armed force.

participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.” HUMAN RIGHTS LAW NO. 8 at 12 (defining the concept “‘rule of law’ as encompassing the liberty of the individual, equality before the law, and freedom from arbitrary government”). However, its scope is not well-defined. See id. (stating: rule of law also “includes such meanings as government according to the law, . . . a minimum of State intervention and administrative power. It also includes the need for fixed and predictable rules of law controlling government action; standards of common decency and fair play in public life; and the ‘fullest possible provision by the community of the conditions that enable the individual to develop into a morally and intellectually responsible person.” ,

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d. Soldiers enjoy less autonomy in their daily lives. Civilians and soldiers are citizens of the same sovereign nation. They share many of the same rights and bear many of the same burdens. However, within the military, the room for autonomy is narrower than it is in the civilian community. The military must be subject to the control of civilian officials, i.e. the President as the Commander-in-Chief\(^{146}\) and his minister of defense, as the function of the military is to carry out the policies made by these civilian officials. Command lenience and an undisciplined rank and file can devastate an army. The establishment of a genuinely separate military justice system will prevent the horrible specter of arbitrary enforcement.

e. The necessity for obedience results in a different application of constitutional protections. The nature of a military service and the demands placed upon individual service members’ liberty interests require a different application of constitutional protections. That which is constitutionally permissible in the civilian community may be rendered impermissible\(^{147}\) in the military due to the axiomatic necessity for obedience and maintenance of good order and discipline. For example, disrespectful language or contemptuous speech, or even advocacy of violent change of civilian institutions may be tolerable in civilian society under certain circumstances. In military society, however, this type of speech may not be tolerated due to the need to maintain the integrity of the command structure, which ultimately ensures the security of the people. By tradition, the military demands discipline, and requires obedience in training and in action. A command demands action and, unlike in civilian life, lawful commands in the military may not be disobeyed.

\(^{146}\) The Constitution of the DRC refers to the President as “Commandant Supreme” (Supreme Commander” of the FARDC. See Article __.

\(^{147}\) In the armies of free societies, while soldiers’ public speech rights may be curtailed, soldiers do criticize their leaders in private and such criticism expressed in a private setting will rarely be sanctioned.
D. The Need for a Truly Separate and Credible Military Justice System in the DRC

Military justice systems have historically been, for the most part, separate from the general civilian justice systems. Many nations, most notably the United States, have steadfastly adhered to the separate military justice paradigm, including those who have now rejected this paradigm. During the past few decades, however, other nations have altered this paradigm in favor of placing their armed forces under the criminal jurisdiction of civilian prosecutorial authorities. Even so, many such countries have retained substantial non-criminal disciplinary authority within their armed forces.

Whether a military justice system should be separate from the general civilian justice system is a question for debate. However, it does seem that establishing distinct systems of justice is more essential for developing nations than for those with strong traditions of military professionalism, discipline, as well as reliable, impartial and legitimate civil justice systems. Establishing a separate military justice system in developing nations critically reinforces the internal disciplinary culture essential for reforming undisciplined forces.

The question arises at this point whether the current Congolese military justice system is a truly separate system of justice and, if not, whether it should be made separate.\(^{148}\) It is true that a separate system of military justice is not the only option available to Congolese leaders under the Third Republic. Many European countries have now abolished the court-martial

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\(^{148}\) In this article, the use of the term “separate” describes a system of justice in which only soldiers, in peacetime, stand trial before military tribunals while enjoying adequate judicial safeguards and basic rights that are accorded to individuals in democratic societies separately. According to Webster’s Desk Dictionary of the English Language (10\(^{th}\) Edition, 1999), the adjective “separate” means “unconnected, or distinct; existing or maintained separately.
system in favor of a single justice system for both military and civilian accused. Obviously, Congolese politicians and military leaders are free to turn to Europe for inspiration, or chart their own course. However, whichever vehicle they ultimately choose for ensuring good order and discipline in the FARDC, it must, if it is to endure, be the result of a national debate and reflect a national covenant among military leaders, politicians, and the people they represent. The vehicle for good order and discipline must be capable of instilling trust and confidence in foot soldiers, officers, and the citizenry at large. This author firmly believes that the DRC needs to implement a truly separate and credible military justice system, as envisioned by the drafters of the current DRC Constitution.

Article 156 of the current Congolese Constitution contemplates the establishment of a truly separate military justice system in the DRC. It specifically provides that military courts have jurisdiction over offenses committed by members of the Armed Forces and National Police. Under the Constitution, the President may derogate to this rule by suspending the criminal jurisdiction of civilian tribunals in favor of that of military tribunals only under three

149 In Belgium, Germany, France and other European countries, the jurisdiction of military courts to try soldiers has been severely curtailed. In these countries, soldiers and civilians are tried solely by civilian courts for all offenses which are not purely military in nature. Excepting the U.S., Canada, and the U.K, the current trend in much of the West is to strip military courts of the power to try soldiers for offenses that are not purely military in nature. In other words, European democratic societies have moved away from heavily militarized justice systems by removing soldiers from the wheels of military justice for offenses that are not purely military in nature. The Basic Law (German Constitution), Article 96, para 2 (stipulating that military courts may be created for the federal forces to act in case of war or for members of the force serving abroad or on board of ships. Details are to be laid down in a federal law. However, no implementing legislation was ever adopted. As a result, even purely military criminal acts are dealt with by civilian courts whilst the disciplinary authority remains within the federal forces). [Provide quotes for Belgium and France here, as appropriate].

instances: (a) in time of war, or under (b) state of siege or (c) emergency.\textsuperscript{151} The Constitution also provides that an organic law determines the powers, organization and operation of military courts.\textsuperscript{152} A plain reading of this provision clearly indicates that military courts in the DRC are only competent to try members of the military and national police, i.e., uniformed personnel. In this regard, the only task that Article 156 left for the Legislature to accomplish was to determine, by law, the powers, organization, and operation of military courts.

The Congolese Military Judicial Code\textsuperscript{153} and relevant civilian and military criminal procedures in force in the DRC before the adoption of the 2006 Constitution established, for a lack of a better term, an “un-separate,” commingled, or merged justice system in the country. However, the military justice system established in the DRC under the 2006 Constitution is separate in the classical sense of reserving for military courts the authority to try members of the armed forces and national police. Civilians may only be tried by military courts during specified periods (i.e., war, siege or emergency). Obviously, the Congolese Military Judicial Code of 2002 is inconsistent with the 2006 Constitution and should be repealed or amended to bring it into conformance with the Constitution. Yet, the DRC Parliament has failed to move quickly by repealing or amending the 2002 Military Judicial Code in order to purge one of the most troubling aspects of a co-mingled system from its military justice system: the grant of

\textsuperscript{151}\textit{Id.}

\textsuperscript{152}\textit{Id.}

jurisdiction to military courts to try members of the civilian population. This is simply unacceptable. Any prior laws that are contrary to the Constitution should swiftly be amended or repealed. Because the current Congolese Constitution could not, expressly or by necessary implication, have intended the maintenance of an “un-separate,” commingled military justice system, the Parliament must now adopt new legislation that faithfully implement Article 156 of the Congolese Constitution by establishing a genuinely separate system of military justice. The following additional observations support the author’s assertion that the Congolese military justice system is not separate as the Constitution mandates:

a. Civilian judges with no military qualifications sit in judgment of soldiers before military courts. Article 17 of the Military Judicial Code indicates that a military court convenes with the assistance of a government attorney (e.g., prosecuting attorney/trial counsel) and a court registrar/clerk. The appointed presiding judge of a military court may, if necessary, request a civilian judge to sit on the bench for a particular case. However, the criteria for making this determination are not spelled out under this Article, nor is it made clear whether the requested civilian judge must meet certain military qualifications to sit on the bench of a military court. While the presiding judge of a military court is always a military jurist, the case may not go forward as he may not alone sit in judgment of the accused when the quorum is not met.

b. Too many civilians may stand trial before military court; the exception swallows the rule. Articles 104 through 119 of the Military Judicial Code provides a laundry list of individuals who may stand trial before military courts. For example, Article 106 states that

154 With the exception of what is known in the DRC as “tribunal de paix”, a DRC military bench must consist of a least three members. However, whenever the required quorum cannot be filled by military judges, the appointed presiding military judge may request a civilian judge available in the jurisdiction to join him on the bench.
members of the armed forces and “assimilated” personnel may stand trial before military tribunals. This Article provides a definition of “assimilated personnel” as members of the National Police and “the builders of the Nation” for offenses committed in training or in the exercise of their functions in the National Police. The genesis of the term “builders” is not entirely clear. In addition, Article 108 indicates that civilians working for the army or the ministry of defense may stand trial before military courts for crimes committed within the Army or in the scope of their functions. Finally, Article 115 provides the instances in which civilian courts have jurisdiction. Under this Article, civilian courts have jurisdiction whenever one of the principals or accomplices is not amenable to military jurisdiction, except in time of war, in a combat zone, under the state of emergency, or when the suspect is a civilian charged as a principal or accomplice in the commission of a military infraction. Under this provision, whenever a soldier and one or more civilians participate in the commission of an offense, military courts trump civilian courts and exercise criminal jurisdiction over both civilian and military suspects. Similarly, military courts will always trump civilian courts in time of war, in combat zone and under the state of emergency or siege. Finally, military courts have jurisdiction over all military offenses,\(^{155}\) irrespective of the civilian status of the suspect.

c. Good order and discipline in the FARDC is adversely impacted by the lack of statutory authority for appropriate line commanders to administer non-judicial punishment. There is no statutory grant of authority upon which appropriate FARDC line commanders may rely to properly dispose of disciplinary infractions and minor criminal offenses committed by their soldiers. Continued reliance on unregulated inherent command authority to punish soldiers must be discouraged as it is no longer in accord with modern standards of fairness and due process,

\(^{155}\) Military offenses are defined as follows:
both procedural and substantive. The absence of statutory authority for FARDC line commanders, at the appropriate level,\textsuperscript{156} to punish their soldiers for neglects and disorders that are prejudicial to good order and discipline is not beneficial to the DRC military justice system because it deprives military commanders of an adequate tool for disposing of purely military and other minor offenses and for imposing swiftly and effectively good order and discipline.\textsuperscript{157}

**Section IV. Recommendations for Congolese Leaders under the Third Republic**

The authority for the FARDC is found in Articles 187 through 192 of the Congolese Constitution currently in force.\textsuperscript{158} Article 187 defines the primary mission of the FARDC, i.e. “to defend the integrity of the national territory and its borders.”\textsuperscript{159} According to Article 188 of the Congolese Constitution, the FARDC should be “republican” in nature, apolitical and subordinate to the civilian authority.\textsuperscript{160} Article 191 prohibits the organization of military or paramilitary groups other than the FARDC, private militias, and the maintenance of an armed

\begin{itemize}
\item \textsuperscript{156} The authority to administer non-judicial punishment is a tool to instill good order and discipline. The levels of command at which this power can be exercised, the procedures to be followed in both the findings and sentencing phases as well as the standards for legal review before final action is taken and the types of punishments to be imposed must all be spelled out by enabling legislation. Article 129 of the Military Judicial Code provides that, subject to the provisions of the Military Judicial Code, the rules of criminal procedure in effect before civilian courts also apply before military courts.
\item \textsuperscript{157} In the United States, a military commander’s non-judicial punishment authority is found in Article 15 of the UCMJ. In layman terms, it is known as the commander’s justice. See infra, note __.
\item \textsuperscript{159} \textit{I}d. (The primary mission of the FARDC is to defend the integrity of the national territory and its borders. In peacetime, as specified by law, they may participate in economic, social and cultural development tasks as well as in ensuring the protection of persons and their goods). See also Article 42 de la loi no.04/023 du 12 novembre 2004 portant organisation generale de la défense et les forces armées [hereinafter \textit{LOI NO. 04/023}] (stating that FARDC mission is “défendre l’intégrité du Territoire contre toute aggression extérieure.”)
\item \textsuperscript{160} DRC Constitution, Article __; see also \textit{LOI NO. 04/023}, Article 40.
\end{itemize}
Finally, Article 191 authorizes the adoption of laws providing for the organization and operation of the FARDC. In practice, however, these constitutional provisions are “dead letters” in the DRC because the FARDC still lack the attributes of a truly republican armed force and continue to show a lack of understanding and adherence to the principle of military subordination to civilian authority. Moreover, the FARDC continues to be home to many armed gangs and private militias. In order to ensure that the establishment of an effective republican army becomes a reality in the DRC, the Kabila Government now bears the heavy burden of setting in motion the necessary conditions that will reverse years of incompetence and irresponsibility under Mobutu and gradually transform the FARDC into a military force capable of fulfilling its constitutional mission.

The starting point must be the FARDC’s repudiation of the Army vision that veteran dictator Mobutu inherited from the Belgian Colonial Master. Mobutu kept that vision intact throughout his dictatorship in order to perpetuate his grip on power, as previously discussed. To cement the gains brought about by the 2006 fair and free elections, the DRC now must raise and maintain a truly professional republican army committed to the principle of civilian control over the military and sworn to defend and protect the Constitution of the Republic. A professional citizen army is the *sine qua non* for the creation of security conditions that will enable the government to attract needed foreign investments and turn this mineral-rich land into a prosperous nation. Congolese political leaders must not squander this precious opportunity to

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161 Id.

162 Id.

163 Each time they sing the Congolese National Anthem, except for the period starting in 1971 up until the end of Mobutu’s dictatorship in 1997, the Congolese pledge to “build a country more beautiful than ever before” (“nous bâtirons un pays plus beau qu’avant.”)
establish a strong and disciplined military. Only such a professional military can prevent the DRC from again becoming an easy target of aggression by foreign mercenaries and armed vultures from neighboring countries, or even worse an oppressive state controlled by a tyrant with the essential support of the armed forces. The only way to achieve these goals is through the establishment of a strong, disciplined, accountable, and militarily credible citizen army. To this end, the Congolese Government should undertake two sets of actions with no further delays: first, formulate a strategic vision for the new army; and second, adopt not only appropriate legislation, but also service regulations\textsuperscript{164} clearly spelling out the core beliefs and values of the FARDC.

A. The Need for a Strategic Vision for a New Armed Force in the DRC

It should be noted from the outset that no country, community, organization, or enterprise can achieve greatness and success without a clear vision. There are many definitions of the term vision.\textsuperscript{165} A close examination of these definitions reveals a number of common

\textsuperscript{164} The Constitution in force in the DRC defines the nature, mission, and purposes of the FARDC (Articles __, __, and __). See also the LAW ON THE ORGANIZATION OF THE ARMED FORCES -LOI NO. 04/023 DU 12 NOVEMBRE 2004- (Articles 40, 41, and 42). However, a service regulation must now be adopted to clearly define the core beliefs and values of the FARDC in order to promote and achieve a military culture and behavior towards civilians in line with the culture and behavior exhibited by other truly republican and professional armed forces in the world.

\textsuperscript{165} For example, Oren Harari defines vision as “a set of ideals and priorities, a picture of the future, a sense of what makes the company special and unique, a core of principles that the company stands for, and a broad set of compelling criteria that will help define organizational success.” The U.S. Army defines the term “vision” as “a personal concept of what an organization must be capable of doing by some future point. It establishes focus for actions and guidance which the organization will follow. A vision can be good or faulty. One of the most celebrated cases of good vision in history was enshrined in Reverend Martin Luther King, Jr.’s “I HAVE A DREAM” speech. Reverend King’s vision called on all Americans to strive for racial equality, social harmony, equal access to justice, and freedom for all. The guiding philosophy of his vision was non-violence and its tangible image, a color-blind and harmonious society. At the opposite end of the vision spectrum stands the worst case of faulty vision formulated by Adolph Hitler in his pursuit of world mastery for Germany. The philosophy underpinning Hitler’s vision was militarism and its tangible image the purification of the Aryan race as the master race. Obviously, a good example of a military organization’s vision is that of the U.S. Army, which states:
characteristics that all effective visions share. Whether good or faulty, a vision is first and foremost inspirational in nature. It provides direction and clarity for the entire organization. It highlights the organization’s goals and objectives and focuses the efforts of each member of the organization. It provides a road map to the future and motivates the members to strive for excellence in the pursuit of the organization’s end states. A vision “must be incorporated in the organization’s culture and reinforced through the strategy and decision-making process.”

Finally, an effective vision must embrace a guiding philosophy, a tangible image, and a set of core beliefs which stem from the organization’s bedrock values and purposes.

The military and political leaders of the DRC have disappointingly thus far failed to formulate and implement a clear vision for the FARDC. For the average Congolese on the street and foreigners visiting the DRC, no demonstrable change since Mobutu’s fall from power has occurred in the behavior of Congolese soldiers towards civilians. In general, Congolese soldiers continue to operate under the Leopoldian vision allowing the mistreatment of civilians without fear of criminal sanctions. King Leopold II of Belgium essentially viewed the Congolese people as “lazy, uncivilized, little better than animals.” He believed that a brutal force was necessary to make such people work, i.e., to be made to exploit their country’s wealth for the benefit of the Europeans. The tangible image of his vision was enshrined in the words “bula matari,” a phraseology coined to convey the perception of invincibility that the colonial administration’s

“America’s Army is a partner in freedom which the Nation can count on . . . A total force trained and ready to fight . . . Serving our Nation at home and abroad . . . A strategic force capable of decisive victory.”


167 HOCHSCHILD, at 121.

168 Id. at 123 [stating “without armed force, you cannot make men leave their homes and families and carry sixty-five pound loads for weeks or months].
force embodied. The present day Congolese people are far from viewing their military establishment in a favorable light and certainly do not consider the FARDC as a partner in freedom upon which they can depend. On the contrary, Congolese populations continue to view the FARDC as an instrument of intimidation and terror. This is unacceptable. Therefore, it is imperative at this juncture that Congolese political and military leaders formulate a new vision for the Congolese Army. A vision shapes behavior. A properly construed vision, effectively taught to the troops, supported at the top and understood by all soldiers, will eventually be accepted as part of the military culture. Such a unifying vision is possible in the DRC.

In formulating such a vision for the FARDC, some of the questions that should be addressed include:

(1) The ideals, values and unique characteristics that the DRC political and military leaders want the FARDC to personify;

(2) The standards of excellence that the FARDC strive for; and

(3) The purpose and direction of the FARDC.

The above list of issues is not exhaustive, but is representative of the ongoing national debate pertaining to the security sector reform of the DRC. The development and formulation of an appropriate vision for the FARDC should not be outsourced, nor should a vision be imposed on the FARDC by foreign entities or potentates. Instead, the Congolese vision for the FARDC must be debated, developed, and formulated by the Congolese people. Once a vision has been formulated, the military leaders of the FARDC as well as the rank and file must understand it and be willing to pursue its realization.

\[169\] While the author believes MONUC, the European Union, western governments and non-governmental organizations may provide expert advice to Congolese political and military leaders in fashioning an appropriate vision for the FARDC, the product of this endeavor must be primarily Congolese in origin and design.
B. The Need for Appropriate legislation and Implementing Regulations

The severance of the umbilical cord still in place between Mobutu’s ANC/FAZ and the FARDC will be incomplete, unless appropriate legislative measures and implementing service regulations are adopted in key areas pertaining to the DRC military establishment, including the following:

(1) Establishment of an effective standing/permanent\textsuperscript{170} commission for the reform of the FARDC. An independent reform oversight body should be established by law in order to ensure an orderly and coherent process for the reform of the armed forces. This legislatively created body could be called an Independent Standing/Permanent Commission for the reform of the FARDC. It should consist of qualified legislators, ministry of defense experts, qualified senior Congolese line officers (retired or on active duty), senior military judges, “magistrats” and “inspecteurs judiciaires” as well as legal scholars trained in military law, international law, the law of armed conflict, criminal law, and constitutional law. It could also benefit from the support of expert consultants from other nations where transformation of armed forces has already taken place. The Commission should be directed to do the following:

(i) The Commission should be responsible for recommending legislative proposals and/or implementing regulations concerning relevant military subjects such as the

\textsuperscript{170} In November 2008, the author traveled to the DRC as a member of a military team tasked with training Congolese prosecutors, judges and criminal investigators on how to effectively investigate and successfully prosecute sex crimes. During this trip, the author learned similar bodies have existed in the DRC from time to time; but none were made permanent. This author believes a permanent commission is necessary to ensure unity of effort, guarrantee continuity, and preserve the work-product.
conditions to be met by individual soldiers for accession into and separation from the military service, promotions within the military, relationships between enlisted and officers, military training, military leadership, the size of the military, the maximum number of officers for each military rank and military salaries.

(ii) The Commission should also be responsible for drafting a professional code of conduct for the Congolese soldier. A code of conduct should not be confused with a military criminal code. A code of conduct prescribes rules that soldiers and officers must observe in their personal behavior. Transgressions of these ideals do not necessarily imply criminal conduct. In the United States, for example, the current Soldier’s Code of Conduct for Army soldiers can be traced back to 1861. Any professional Code of Conduct for the Congolese soldier could draw from the U.S. model. It also could incorporate appropriate and authentic elements of pre-colonial African warriors’ codes of personal conduct, which can be found in the history of pre-colonial African armies, kingdoms, and empires.

171 The proposed Code of Professional Conduct for the Congolese Soldier should be tailored to the nature of military service. While the author understands that the FARDC are covered by the provisions of the Congolese ordinary Code of Conduct for Public Servants adopted by Decret-Loi No. 017/2002 du 03 Octobre 2002, he advocates the adoption of a special code of conduct for the FARDC and PNC in addition to the ordinary Code of Conduct aforementioned.

172 Starting under Mobutu’s dictatorship, the continued, unregulated involvement of Congolese GOs and other military officers in business and looting of minerals has had an adverse impact on good order and discipline within the FARDC. Because such involvement is subject to no known accountability rules, it has been a contributing factor to the lack of trust and confidence of the Congolese people in the FARDC just as it has seriously sapped the professional mindset of Congolese soldiers. Another negative consequence of the involvement of Congolese GOs and other military officers in business is that they are perceived more often than not as favoring their business activities over their military duties and placing themselves above the law thereby setting a poor example for the rank and file in their daily interactions with the citizenry. As a result of their deep involvement in business activities, both lawful and unlawful, many Congolese GOs have often been accused of enriching themselves at the expense of the rank and file, especially in light of many instances of alleged disappearance or embezzlement of soldier wages.

173 The Lieber Code is the parent of the current American Soldier’s Code of Conduct.

174 In the DRC, the Standards of Conduct for public service apply to the military as well. But there is no additional code of conduct for the military or even military jurists.
(iii) The Commission should be responsible for conducting a full review of the organization, structure, and operation of the armed forces. This review will include examination of the legal authorities governing the administration of military justice with a view towards severing it completely from the civilian justice system. These reviews are critical given the current entanglement of the Congolese military justice system with the administration of justice for civilians. The DRC should consider repudiating the current co-mingled system in favor of a genuinely separate and effective military justice system solely reserved for the FARDC and the PCN. A military justice system should never be applied to the citizenry at large; rather, it should only apply to civilians under exigent circumstances as defined by the Constitution. To achieve this end, the Commission should seriously study the most successful military justice systems currently employed in democratic societies around the world and draw from such systems in fashioning a suitable system of military justice in the DRC.

(2) Amend or repeal the 2002 Military Judiciary Code and any other legislation pertaining to military justice found to be contrary to, or inconsistent with, the 2006 Constitution. Article 156 of the 2006 Constitution establishes in the DRC a separate justice system for the

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175 The Law on the Organization of the Armed Forces -Loi No. 04/023 du 12 Novembre 2004- should be revisited as it was the product of unelected bodies during the transition period in the DRC (2002 until 2006). One of the questions that the Parliament should address is the need for the existence of a separate naval force command in the DRC. The author believes the naval force command should be streamlined and be made a subset of the land forces command. In lieu thereof, a small coast guard should be established to police our territorial waters in the Great Lakes, the Congo River, and the Atlantic Ocean, as appropriate. This argument is aided by the need for targeted use of the resources available in order to raise a credible land force expeditiously and by the history of foreign aggressions against the DRC. After the DRC independence in 1960, indeed, the Belgian paratroopers who rescued their expatriates in Kisangani were all airborne troops. In 1977 and 1978, the French, Belgian and Moroccan troops that repelled the attack launched from Angola by the Katangese ex-gendarmes were all airborne to the war front in Kolwezi. Finally, in 1996 and again in 1998, Rwandan and Ugandan forces supporting Congolese rebel forces invaded the DRC by land, not by any waterway.

176 Let me be clear, I am not advocating the duplication in the DRC of any particular western country’s military system because whatever system of military justice that Congolese leaders agree to establish must, if it is to endure, take into account Congolese economic, political, and social realities.
FARDC and the “PNC.” Prior to 2006, however, the 2002 Military Judiciary Code and other relevant laws established an “un-separate,” commingled military justice system in the DRC. Clearly, the 2006 Military Juducial Code and other relevant laws pertaining to the administration of military justice before 2006 are in direct conflict with the 2006 Constitution. The “un-separate,” commingled system of military justice allowing military courts to try civilians contrary to the provisions of the 2006 Constitution must be viewed as unconstitutional. This unconstitutional anachronism must be purged from the DRC legal system in favor of new legislation faithfully implementing Article 156 of the 2006 Constitution.

(3) Restrict/limit military courts’ personal jurisdiction over civilians. Currently, the DRC military courts and tribunals exercise jurisdiction over civilians accused of committing criminal offenses with weapons of war, or who, as part of a rebel faction or insurrectional gang, engage in acts of betrayal, espionage, violence or insults toward a superior officer or sentry, steal military object, or loot. In addition, members of the Builders of the Nation, National Police, and Ministry of Defense are subject to trial before military courts and tribunals. These practices should be reversed through adoption of appropriate legislation. Military courts and tribunals should be reserved for members of the FARDC and the National police, as stated in the Constitution. Civilians should be subject to trial by court-martial only in those rare circumstances expressly specified in the Constitution.

(4) Prohibition of unlawful command influence (UCI) on military judges, prosecutors, investigators, and potential witnesses. UCI is defined as “the improper use, or perception of use,
of superior authority to interfere with the court-martial process.” It “can take many shapes and forms, and can arise at any stage of the court-martial process.” A cardinal principal of the criminal justice system –civilian or military –in democratic societies is that the accused is entitled to a fair and impartial trial. No one has the right to unlawfully influence the judicial process. For this reason, a trial “must be kept free from substantial doubt with respect to fairness and impartiality . . . . This appearance of impartiality cannot be maintained in a trial unless the members of the court are left unencumbered from powerful external influences.”

The key objective of this prohibition is to prevent the substitution of the judgment of a superior in command for that of a military judge, prosecutor, or witness which, if allowed, would unlawfully interfere with the integrity of the entire trial process.

Even in the United States, a country with a robust and mature military justice system, UCI continues to be viewed as "the mortal enemy of military justice” [emphasis added] and “[w]here it is found to exist, judicial authorities must always take those steps necessary to preserve both the actual and apparent fairness of the proceeding.” UCI is the “ultimate threat to

177 2 FRANCIS A. GILLIGAN & FREDRIC I. LEDERER, COURT-MARTIAL PROCEDURE § 18-28-.00 (2d ed. 1999).
180 In the United States, Article 37, Uniform Code of Military Justice (UCMJ) prohibits anyone subject to the Code from actually unlawfully influencing the court-martial process .
the impartiality of military criminal law.” So must it be viewed in the DRC. UCI should not be tolerated within the DRC military justice system because it is fatal to the impartiality of the trial process. The DRC military justice system must be allowed to provide a fair and impartial evaluation of probative facts by the court or tribunal without the unlawful influence of superior authority, such as senior line commanders, senior military magistrates, the Minister of Defense or the President in his capacity as Supreme Commander of the FARDC. Military judges must not be influenced by anything other than legal and competent evidence that is admissible in the proceedings before the court. Appropriate proscriptions of UCI must be codified and enforced. FARDC senior military officers and senior military officers responsible for the administration of military justice must be held accountable for any actual or attempted exertion of improper or corrupting influence over the military judicial process. Unless strict prohibitions against such influence are established by law as a foundational element of the new military justice system, all other efforts at reform may well be in vain.

(5) Statutory grant of authority to commanding officers to impose non-judicial punishment (NJP) for purely military offenses and ordinary minor offenses punishable by confinement for less than 1 year. Unlike their U.S. peers, FARDC line commanders play no

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184 2 FRANCIS A. GILLIGAN & FREDRIC I. LEDERER, COURT-MARTIAL PROCEDURE § 15-90-.00 (2d ed. 1999).

185 According to a statement posted on the website of the Office of the High Commissioner for Human Rights of the United Nations regarding the situation in the DRC, “[c]ivil and military jurisdictions continue to be prone to corruption, and lack the human and material resources needed to function efficiently. Interference by military and political authorities in the administration of justice is widespread. Despite declarations by the authorities, hardly any progress has been made in the fight against impunity.” Available at http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/ZRSummary0809.aspx

direct role in the decision to prosecute a soldier for an alleged offense, or to review the results of military trials with a view toward taking remedial or clemency action favorable to the accused. Similarly, there is no specific statutory authorization in the DRC for FARDC line commanders to impose NJP, unlike in the U.S. military justice system. There is strong evidence that authority to impose NJP, like the commander’s duty to maintain good order and discipline throughout the unit, is “an absolutely essential function of command.” In the United States, for example, commanders relied upon their inherent command authority to impose NJP upon offending soldiers well before Congress provided such authority by statute for the first time in 1916. This practice reflected the essential nexus between order and discipline and the ability to effectively

the U.S. commander’s role in the military justice system from that of his Canadian and Israeli counterparts and concluding: “the U.S. commander’s role in the military justice system is distinctive because of his dominant position and control over many aspects of disciplinary proceedings. * * * The procedures for disciplining the military forces of a nation are a direct reflection of the society that the forces were created to protect.”). Critics of the U.S. Commander’s dominant role in the U.S. military justice system would like the U.S. to learn from other countries who have restricted the role of commanders in their military justice systems to combat perceptions and potential perceptions of injustices and unlawful command influence. However, as observed Alleman at 16 Duke J. Comp. & Int’l Law 169, 191, “there is a fundamental anomaly that vests a commander with life-or-death authority over his troops in combat but that does not trust the same commander to make a sound decision with respect to justice and fairness to the individual. * * * To make a commander responsible for maintaining discipline among his or her troops without giving the commander power and authority over the military justice system, places the commander at an extreme disadvantage.”

In this regard, it should be noted that the DRC is not alone as the current trend in many nations is to restrict the role of military commanders in their military justice systems. See Lindsy Nicole Alleman, NOTE: WHO IS IN CHARGE, AND WHO SHOULD BE? THE DISCIPLINARY ROLE OF THE COMMANDER IN MILITARY JUSTICE SYSTEMS 16 Duke J. Comp. & Int’l Law 169, 191 (Winter, 2006) (indicating: [o]ther nations, such as Canada and Israel, have restricted the role of commanders in their military justices systems in order to limit actual bias as well as accusations and perceptions of unlawful command influence in judicial proceedings.”).

In the United States, the Congress granted line commanders statutory authority to impose non-judicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ). It is not a criminal trial and is wholly separate from the court-martial system. See S. Rep. No. 1911, 87th Cong., 2d Sess. 2, reprinted, in 1962 U.S. Code Cong. & Admin. News 2379, 2380. Punishments available to commanders under NJP proceedings may include reduction in rank for enlisted members, forfeiture of pay and allowances, restriction to military post/base, extra duties, correctional custody for enlisted members, and reprimand. An important right given to a soldier under Article 15, UCMJ is the right to turn down the commander’s Article 15, UCMJ proceedings offer and to demand that he be tried by court-martial. 52, A. F. L. Rev. at 194 (discussing two advantages of Article 15, UCMJ: “[it] allows a commander to tailor a disciplinary response based on the seriousness of the misconduct and its impact on good order and discipline. The service member benefits because the commander can deal with small problems quickly without having to resort to the sanctions that may result from a court-martial.”).

52, A. F. L. Rev. at 186.
lead military members—to ask a member to potentially sacrifice his life requires strict obedience
to orders, violation of which required strict responses. The author believes the DRC should adopt a law specifically giving certain line commanders the authority to impose NJP. The primary effect of this grant of authority would be the enhancement of the commanders’ legal authority “to enforce good order and discipline within their units.”

The law should spell out the types of offenses falling within a commander’s NJP authority, the punishments available, the rights of a soldier—including the right to refuse NJP and to demand trial by court-martial-and the requirement for commanders to consult with legal counsel before offering to dispose of an offense by NJP and before imposing punishment.

Some of the military reasons in favor of providing FARDC line commanders with the authority to impose NJP upon their troops, as appropriate, include:

a. The NJP option provides commanders with flexibility to dispose of minor offenses expeditiously;

b. It is “a tool used to maintain good order and discipline while also promoting positive behavior changes in the member without the stigma of a court-martial conviction.”

c. The NJP option’s “flexibility allows a commander to tailor a disciplinary response based on the seriousness of the misconduct and its impact on good order and discipline.”

d. NJP sanctions are “less onerous than a court-martial, yet more severe than non-punitive measures.”

190 52, A. F. L. Rev. at 186. [should set forth the argument in favor of this observation as stated in this reference].

191 52, A. F. L. Rev. at 194, citing, MCM, Part V, para. 1(c).

192 52, A. F. L. Rev. at 194.
(6) Creation of a training ground for future Army leaders. The DRC should consider adopting a law establishing a Reserve Officer’s Training Corps (ROTC) program for qualified students in all state-accredited universities. The ROTC program would provide first-hand training to all enrollees on what it takes to lead others and motivate groups, and how to conduct missions as an officer in the Army. To be eligible for the proposed ROTC program, a student should hold a valid secondary school diploma and successfully complete a three-month military training at a designated training camp. The criteria for determining successful completion of the three-month military training would be fixed by implementing regulation. While attending classes at a state-accredited university, an ROTC enrollee would hold the dual status of student – ROTC cadet. A direct benefit of the cadet status, would be an annual financial grant to defray the costs of university tuition, books, subsistence, and lodging expenses. The criteria, conditions, and requirements for maintaining one’s ROTC status during schooling, as well as the actual commissioning of officers and enlistment of noncommissioned officers into the regular army, shall be fixed by separate legislation or implementing service regulation.\textsuperscript{194} Such a proposed legislative scheme would facilitate and accelerate the raising of a professional and literate armed force. The Congolese Army would at long last get rid of the social wrecks and other undesirables who have filled its ranks throughout the sad history of the country.

\textsuperscript{193} 52, A. F. L. Rev. at 193.

\textsuperscript{194} The author realizes that the proposed ROTC scheme is a sensitive, complex, and costly program. However, if a need for further explanation is expressed by Congolese leaders, the author stands ready to examine it fully in a separate article and demonstrate how the DRC could eventually benefit in the long run from the implementation of such a system. For example, most FARDC soldiers, including even a substantial number of FARDC officers lack technical competence and skills required for civilian employment after retirement. A direct, albeit distant, benefit of the proposed program would be to prepare ROTC beneficiaries for future transition from military service into civilian employment.
(7) *Adopt legislation banning the FARDC from engaging in domestic law enforcement* activities, except as provided by law or the Constitution. Such legislation would go a long way to ending the endemic misuse of the Congolese Army by government officials in conducting illegitimate searches of civilian homes and seizures of civilians’ property. The law must make clear that no Congolese official, including the FARDC Supreme Commander, may issue an order authorizing the Army, or a unit thereof, to execute a search warrant upon any civilian premises or an arrest warrant against any civilian anywhere on Congolese soil, except as expressly provided by law or the Constitution.  

(8) *Adopt legislation limiting the number of FARDC General Officers (GOs).* As discussed earlier, the Force Publique created by King Leopold II of Belgium grew to be the most powerful army in sub-Saharan Africa. Force Publique soldiers supposedly fought brilliantly in the two World Wars alongside western allies. For example, their participation in World War II was supposedly instrumental in convincing Mussolini’s troops to surrender in Ethiopia. Yet, up until the DRC independence from Belgium on 30 June 1960, the Force Publique had no Congolese officers and was solely commanded by Belgians. More importantly, the Force Publique had only one GO: General Jansens. After 30 June 1960, Premier Lumumba promoted several Congolese NCOs to officership, including Mobutu who became Colonel Mobutu by a stroke of a pen. On the eve of Mobutu’s 1965 coup d’état, the number of Congolese GOs had 

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195 In the United States the legislation banning the military from conducting law enforcement activities involving civilians is known as POSSE COMITATUS, (Place cite here) ____________.

196 It is true that Article 41 of the ____ prohibits the use of the armed forces by anyone to advance personal goals. However, the author contends this legislative enactment is at best ambiguous. It could be interpreted as not specifically prohibiting the employment of the armed forces by those in power to harass or intimidate civilian populations.
grown from zero to four: General Mobutu himself, General Lundula General Bobozo and General Mulamba. Before Mobutu’s disgraceful fall from power on 17 May 1996, however, there were 78 Generals in his army.\textsuperscript{197}

Mobutu’s Armed Forces were top-heavy with generals. The disproportionally high number of generals was unreasonable for an armed force of the size of Mobutu’s army throughout his 32 years of dictatorship in the DRC. His largesse of General Officer appointments served only as a means for Mobutu to reward his associates to achieve his end of control over the army and the country. With the exception of a few who were highly educated, such as law professor General Likulia, many of Mobutu’s generals had no college degree. Chief among the uneducated Generals’ class was General Louis “Degonzag” Bobozo, Mobutu’s maternal uncle. He truly was the epitome of Mobutu’s army analphabets.\textsuperscript{198}

Today, the FARDC reportedly count well over 80 Generals in a total armed force consisting of less than 300,000 men and women.\textsuperscript{199} This is simply too high a number of General Officers for such a small armed force,\textsuperscript{200} especially when there are serious questions concerning the military training, formal education, technical competence and selection criteria for such GOs. It is absolutely imperative that the FARDC be purged of this Mobutuist legacy of so many undeserving GOs. This practice must be rejected. The author proposes that reversal of this counterproductive practice be pursued and achieved legislatively. Before a law is adopted,

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\textsuperscript{197} This figure was provided the Director of “the Centre Superieur Militaire de Kinshasa” during the author’s November 2008 official visit in Kinshasa as head of a DIILS-led training mission to the DRC.
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\textsuperscript{198} Throughout Mobutu’s era, folk stories about Bobozo’s illiteracy abundantly filled the streets of Kinshasa.
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\textsuperscript{199} This figure fluctuates depending upon who is talking. During his 2007 mission to the DRC as member of a three-person DIILS assessment team, the author was told by Congolse officials that the size of the FARDC was 100,000 men and women. In 2008, however, the author was informed that size was probably 300,000. In truth, there is really no way of knowing the accurate size of the FARDC as military personnel come in and vanish without proper accountability rules.
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\textsuperscript{200} By comparison and by law, the U.S. land force (Army), one of the largest armies in the world, may not exceed 302 GOs.
\end{flushright}
however, the Executive Branch must be given the opportunity to appear before the parliament to state its case for continued funding and maintenance of so many GO positions within the FARDC. The author predicts that the Executive Branch will unlikely convince the Parliament of the wisdom (fiscal and military) of the continued presence of so many GOs in the FARDC. However, the process of checks and balances between the Executive and Legislative Branches will be demonstrated to the citizenry. Transparency in government, to include the military, will be promoted and eventually inculcated.

(9) Upgrade the rank/grade of top military prosecutors at the national and provincial levels. As we have shown in Section IV of this Paper, unlawful command influence (UCI) remains the mortal enemy of military justice in the DRC. Any effort to reform the DRC military justice system is likely to fail, unless UCI is tackled effectively. It is imperative that every effort be employed to insulate military judges, prosecutors, and criminal investigators from UCI. The author believes that providing robust military rank/grade to chief national and provincial military prosecutors should be part of the effort to combat UCI within the FARDC. For this reason, the author proposes that a law be adopted upgrading the rank/grade of the “Auditeur Général” of the FARDC and that of the First President of “la Haute Cour Militaire,” making them higher than that of a “Commandant de Région Militaire.” Similarly, the same law should upgrade the rank/grade of chief military judges and prosecutors at the provincial levels by requiring that they be of a rank/grade equal to that of a “Commandant de Région Militaire.” The maltreatment by General Kifua of three military prosecutors in the performance of their duties, as previously discussed, militates in favor of such proposed legislation. Obviously, no legislation is a magic cure to cause the UCI to vanish overnight; however, without upgrading the rank/grade of those
who are chiefly responsible for administering military justice on a daily basis, it will be difficult to prevent UCI and other regrettable forms of intimidation by FARDC military regional commanders and other senior MOD officials from infecting the administration of military justice.

(10) Miscellaneous measures. In addition to the foregoing measures, the following steps should be implemented immediately without waiting for the completion of the previously-proposed review of military processes:

(i) Speed up the disarmament and demobilization of all soldiers under the age of 17 years. News media reports out of the DRC continue to indicate the presence of child soldiers in the ranks of the FARDC. This can only result in adverse publicity for the FARDC. The employment of children as soldiers violates international law, specifically the 1977 Protocol I to the Geneva Conventions of 1949, the 2002 Protocol to the Child Convention, all of which have been ratified by the DRC.\textsuperscript{201}

(ii) Issue a service regulation implementing Article 188 of the Constitution. The service regulation should, in no uncertain terms, declare the FARDC to be apolitical and subordinate to the civilian authority. The regulation would articulate for the average soldier his/her political rights and the manner, time and place such rights may be exercised.

(iii) Adopt a law criminalizing the carrying/display of firearms and the wear of military attire off military installations or establishments, except when traveling off post on official duty, unless authorized by superior military order. This legislation would help create an

\textsuperscript{201} The DRC ratified the cited instruments on __ and __, respectively.
environment free from harassment and intimidation by armed soldiers in downtown areas, civilian residential areas, shopping centers, places of worship, sports fields or centers, and park and recreational centers. Restricting the carrying of firearms by soldiers to military installations, training fields, and designated governmental buildings and places during duty hours would reduce the likelihood of firearm abuse.

V. CONCLUSION

This Paper provided a brief review of the sad modern history of the Congolese military, starting with the creation of the “Force Publique” by King Leopold II of Belgium. The “Force Publique” was designed to serve as a coercive framework of control to keep the Congolese population in check and force them to produce goods and services primarily for the benefit of their colonial masters. After the DRC gained its independence in 1960 from Belgium, the “Force Publique” took new names (ANC, FAZ) and found new masters to obey and protect: Mobutu and his cronies; however, its vision, nature, and modus operandi remained practically unchanged. The ANC or FAZ simply became a tool of oppression operating as a personal militia under Mobutu’s firm control for his protection, as well as that of his cronies. This Paper next examined the events that led to Joseph Kabange Kabila’s ascendancy to power in the DRC following the much-welcomed ousting of Mobutu from power by Mzee Kabila. Additionally, it answered the question of why an effective and truly separate system of military justice is necessary in the DRC. Finally, this paper offered specific recommendations to Congolese leaders to assist in the establishment of a disciplined and militarily credible armed force in their country. The election of President Joseph Kabange Kabila in 2006 marked a renewal of the
democratic experiment begun in 1960 and the beginning of the Third Republic in the DRC. His election and the revival of true democracy holds both hope and promise for the people of the DRC in the midst of enormous challenges that the Congolese must confront and resolve, if they are to survive as a people and as a nation. A reformed FARDC served by an impartial, transparent military justice system, truly separate from the country’s civilian justice system, will enhance the prospect for such survival.

The author hopes that this Paper may make a modest contribution to the national conversation that DRC’s sons and daughters are having right now on what should be the way forward in the aftermath of the 2006 landmark elections. For nearly one hundred years prior to June 30, 1960, the people of the DRC lived under an oppressive and dehumanizing colonial regime that denied them basic human rights. On Independence Day, they looked forward to a bright future. However, this proved to be wishful thinking as they were forced to endure nearly four decades of equally oppressive, paradoxically brutal, and grotesquely arbitrary rule under Mobutu. While the DRC has been and continues to be regarded as a geological scandal, its minerals and other natural resources have yet to benefit the country or be used to achieve better living conditions for the majority of its people. So far, the true beneficiaries of Congo’s enormous wealth have been its colonial and neo-colonial masters, as well as its post-independence, native neo-colonial kleptocrats led by Mobutu. Now, the DRC again stands at the crossroads of history. The 2006 elections offer the Congolese people a second chance for a bright and more hopeful future. It is an opportunity that the Congolese cannot afford to
They must seize it, if they are to survive as a nation, and live up to their Independence Day’s solemn promise to "build a country more beautiful than ever before."²⁰²

A Roman maxim more than two thousand years old advised “he who desires peace must prepare for war.”²⁰³ No nation should depend on its neighbors, foreign masters, or the international community for the whole of its security and the integrity of its territory. Every nation must be prepared to defend itself, if and when attacked by enemies, foreign or domestic. Twice in the span of eleven years, the DRC was attacked by its neighbors and their Congolese associates. Sadly, in each instance, the Congolese armed forces were unable to repel and defeat the attackers. Veteran dictator Mobutu and his Congolese supporters –some of whom are still politically active in the DRC– are alone to blame for the unsatisfactory performance of the Congolese armed forces in their battle with invading forces. Mobutu and his Congolese cronies had forty years in which to establish a disciplined and militarily credible armed force in the DRC. Instead, they chose, with great relish, to plunder the resources of the nation for their personal enrichment, spent most of their time in government indulging in pleasurable activities, and relied solely on western intervention for the protection of the nation.

In the author’s opinion, the failure to raise, train, and maintain a disciplined and militarily credible armed force is the highest act of treason committed by Mobutu and his cronies. The leaders of the Third Republic now have a unique opportunity to reverse this shameful legacy, to secure the nation and establish a disciplined and credible fighting force consisting of well-

²⁰² The Congolese National Anthem “Debout Congolais!” translated into English as “Stand up, Congolese!”

²⁰³ The Latin phrase is “si vis pacem, para bellum,” which means literally “if you want peace, prepare the war.”
trained, well-equipped, highly motivated, and operationally ready soldiers. This is a critical task that must be undertaken expeditiously. No further delays should be countenanced. Protecting the DRC from harmful activities by any future foreign invaders or other soldiers of fortune intending to partake in Congo’s natural resources by force depends upon swift and concentrated action. But most of all, it is an absolute imperative if the DRC is to become a safe and secure environment in which its inhabitants can live in peace, work gainfully, and happily prosper.

Without rehabilitation as proposed herein, it is very probable that the FARDC will continue to operate under the same vision and exhibit the same mentality and behavior as Mobutu’s discredited ANC/FAZ. However, the author strongly believes that the FARDC are not likely to willingly commit themselves to the rehabilitation center without the insistence of the Congolese themselves. Neither the West, nor MONUC, nor any other foreign power will be able to transform the FARDC into a disciplined and militarily credible force, if the Congolese lack the requisite commitment to do so. Unless coupled with a genuine Congolese commitment to bring about reform, foreign financial assistance and military expertise provided by the United Nations Organization via MONUC, western governments and other members of the international community will be doomed to failure. It is up to all the sons and daughters of the DRC who genuinely love their fatherland to rethink their beliefs about their armed force, and to stop duping themselves that foreign masters or friends will do it for them. Now is the time for the DRC political and military leadership to roll up their sleeves and start the hard work of establishing a truly professional and militarily credible citizen army equipped with a genuinely separate military justice system, free of unlawful command influence and capable of conducting fair and impartial trials. A more hopeful, secure and prosperous DRC will require a fundamental
transformation of the Congolese military. Congolese military leaders as well as the rank and file must develop a fuller understanding of the role of a professional army in a democracy. Establishing an effective and disciplined citizen army in the DRC constitutes the toughest challenge facing the Congolese people and their leaders at the dawn of the Third Republic. Anyone seriously desiring to ensure the success of the Third Republic in the long run must understand that democracy is unlikely to take hold in the DRC without a complete transformation of the FARDC.